

Report on the

Alabama Board of Registration For Interior Design State of Alabama

Birmingham, Alabama



Department of Examiners of Public Accounts

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September 23, 2009

Senator Larry Dixon
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Senator Dixon,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Alabama Board of Registration for Interior Design** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Alabama Board of Registration for Interior Design**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,



Ronald L. Jones
Chief Examiner

Examiner: Robin Hutcheson

CONTENTS

PROFILE.....	1
Purpose/Authority.....	1
Characteristics.....	1
Operations.....	3
Financial	6
SIGNIFICANT ISSUES	6
STATUS OF PRIOR FINDINGS/SIGNIFICANT ISSUES	9
ORGANIZATION	10
PERSONNEL	11
PERFORMANCE CHARACTERISITCS	11
COMPLAINT HANDLING.....	11
REGULATION IN CONJUNCTION WITH OTHER ENTITIES	13
SMART BUDGETING.....	14
FINANCIAL INFORMATION	15
Schedule of Fees	15
Schedule of Receipts, Disbursements, and Balances.....	17
Operating Receipts vs. Operating Disbursements (Chart).....	18
APPENDICES	19
SMART Performance Reports.....	19
Statutory Authority (includes Act 2006-518)	22
Circuit Court of Jefferson County Ruling (8/23/04).....	35
Act 2006-518 – (4/18/06)	37
Alabama Supreme Court Ruling – Lupo Case (10/12/07).....	42
Attorney General Opinion 2008-055 (3/12/08)	53
Board Members	58
RESPONSE TO SIGNIFICANT ISSUES	59

PROFILE

Purpose/Authority

The Board of Registration for Interior Design was established by Act 1982-497, *Acts of Alabama 1982* codified as *Code of Alabama 1975*, Sections 34-15A-1 through 34-15A-7 to regulate and license the practice of interior design.

Act 2001-660, *Acts of Alabama 2001* repealed Sections 34-15A-1 through 34-15A-7 and replaced them with Sections 34-15B-1 through 34-15B-18 effective August 2, 2001, thereby establishing a new Board of Registration for Interior Design and providing a comprehensive regulation of the practice of interior design requiring all interior designers to become registrants of the board.

The board's authority to regulate the profession was subsequently litigated, which resulted in the following significant occurrences:

1. Circuit Court of Jefferson County ruling of 8/23/04 – 2001 licensing law declared unconstitutional (see appendices).
2. Act 2006-518 (Sunset Legislation) effective 4/18/06 – preserved and amended the 2001 licensing law to allow the practices of interior design to be performed by unlicensed persons (see appendices).
3. Alabama Supreme Court Ruling of 10/12/07 - affirmed the ruling of the circuit court that the 2001 licensing law was unconstitutional (see appendices).
4. Attorney General's Opinion of 3/12/08 – opined that the board could operate under the 2001 licensing law, as preserved and amended by Act 2006-518 (see appendices).

As a result of these occurrences, the board is now essentially regulating use of the title but not the practice of interior design. For further details, see prior significant issue 2006-01 in the STATUS OF PRIOR FINDINGS/SIGNIFICANT ISSUES section of this report.

Characteristics

Members and Selection

7 members – Appointed by the governor

Code of Alabama 1975, § 34-15B-4(a)

A statewide nominating committee of registered interior designers provides two nominees for each of the board's five district representative positions.

Code of Alabama 1975, § 34-15B-4(e)(10)

The governor appoints an educator member and a consumer member with or without input from the statewide nominating committee.

Code of Alabama 1975, § 34-15B-4(f)

Term	<p>4 years – Staggered terms No member shall serve more than two consecutive terms. Members continue to serve until a successor is appointed.</p> <p><i>Code of Alabama 1975, § 34-15B-4(b)</i></p>
Qualifications	<ul style="list-style-type: none"> • Five members of the board must hold valid certificates of registration from the board, and must be engaged in the full time practice of interior design. • One member must be a professional educator who teaches in a college or university level interior design program. • One member must be a consumer who does not hold a certificate of registration. <p><i>Code of Alabama 1975, § 34-15B-4(d)(1-2)</i></p>
Racial Representation	<p>At least one must be a member of a minority race. The board has one minority race member (Black).</p> <p><i>Code of Alabama 1975, § 34-15B-4(d) (3)</i></p>
Geographical Representation	<p>The five members of the board who hold certificates of registration are appointed from the following districts:</p> <ul style="list-style-type: none"> • The <u>Northern District</u> comprised of Lauderdale, Colbert, Lawrence, Limestone, Morgan, Cullman, Marshall, Madison, Jackson, DeKalb, Cherokee, Etowah, Calhoun, and Cleburne Counties. • The <u>Central District</u> comprised of Blount, Jefferson, St. Clair, and Talladega Counties. • The <u>Western District</u> comprised of Marion, Winston, Lamar, Fayette, Franklin, Walker, Pickens, Tuscaloosa, Sumter, Greene, Hale, Bibb, Perry, Dallas, Marengo, Choctaw, Lowndes, Shelby, and Wilcox Counties. • The <u>Eastern District</u> comprised of Randolph, Clay, Chilton, Coosa, Tallapoosa, Chambers, Autauga, Elmore, Lee, Macon, Montgomery, Bullock, Pike, Coffee, Dale, Henry, Barbour, Russell, and Crenshaw Counties. • The <u>Southern District</u> comprised of Butler, Covington, Conecuh, Escambia, Houston, Monroe, Clarke, Washington, Mobile, Geneva, and Baldwin Counties. <p><i>Code of Alabama 1975, § 34-15B-4(e) (1-6)</i></p>

Consumer Representation	One member must be a consumer who does not hold a certificate of registration. The board has one consumer member. <i>Code of Alabama 1975, § 34-15B-4(d) (2)</i>																																
Other Representation	No other representation required by law.																																
Compensation	Each member of the board receives the same per diem, travel, and expense allowance as paid to state employees for time spent in the performance of his or her duties and for necessary travel. <i>Code of Alabama 1975, § 34-15B-4(h)</i>																																
<u>Operations</u>																																	
Administrator	Bryant G. Williams, Administrator Contract employee. Compensation set by the board. Annual compensation \$10.00 per hour, not to exceed 20 hours per week, Not to exceed \$10,000 per year.																																
Location	2101 Highland Avenue, Suite 150 Birmingham, AL 35205																																
Office Hours	Monday, Wednesday, & Friday 8:00 AM – 1:00 PM See Significant Issue 2009-2																																
Examinations (Interior Designer) – practice in buildings less than 5001 square feet	<p>For a certificate of registration, applicants must first pass the National Council for Interior Design Qualification (NCIDQ) examination or any equivalent examination, based on standards set by the NCIDQ.</p> <p>The NCIDQ administers examinations twice a year in Birmingham, once in the spring and once in the fall. The board is not involved in the NCIDQ examination process.</p> <p>Following are the NCIDQ examination pass/fail rates for the past four years:</p> <table><tr><th colspan="4">Section I – Principles and Practices of Interior Design (Multiple Choice)</th></tr><tr><th></th><th>Applicants</th><th>Passed</th><th>Failed</th></tr><tr><td>2005</td><td>25</td><td>12</td><td>13</td></tr><tr><td>2006</td><td>45</td><td>36</td><td>9</td></tr><tr><td>2007</td><td>26</td><td>21</td><td>5</td></tr><tr><td>2008</td><td>16</td><td>11</td><td>5</td></tr><tr><td colspan="4"></td></tr><tr><td colspan="4"></td></tr></table>	Section I – Principles and Practices of Interior Design (Multiple Choice)					Applicants	Passed	Failed	2005	25	12	13	2006	45	36	9	2007	26	21	5	2008	16	11	5								
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2005	25	12	13																														
2006	45	36	9																														
2007	26	21	5																														
2008	16	11	5																														

	Section II – Contract Documents and Administration (Multiple Choice)			
		Applicants	Passed	Failed
	2005	27	14	13
	2006	50	33	17
	2007	30	24	6
	2008	13	8	5
	Section III – Schematics and Design Development (Practicum)			
		Applicants	Passed	Failed
	2005	28	17	11
	2006	40	30	10
	2007	32	22	10
	2008	16	13	3
	Alabama institutions of higher education offering interior design curricula are:			
	Degree		Institution	
	Associates		Virginia College - Mobile	
	Intermediate		Virginia College - Birmingham	
	Bachelors		Auburn Univ., Univ. of AL, Samford Univ., Virginia College - Birmingham	
Separate pass/fail data for applicants for NCIDQ examination with Alabama school educational backgrounds was not available from NCIDQ.				
<i>Code of Alabama 1975</i> , § 34-15B-6(b)(1)(b), § 34-15B-7(b)(3), and §34-15B-13				
Examinations (Registered Interior Designer) – practice in buildings of unlimited square feet.	Sealed Level Examination to be developed by a special examination committee.			
	Note: The sealed level examination required by law from which to award the “Registered Interior Designer” designation has not been developed.			
	<i>Code of Alabama 1975</i> , § 34-15B-7			
Licensees	277 Certificate Holders As of July 2009			

Reciprocity	<p>Any person registered or licensed to practice interior design in any state other than Alabama, who has successfully passed the NCIDQ examination or an equivalent examination which is accepted and approved by the board, may apply for a certificate of registration, which must be issued if the individual otherwise complies with the requirements imposed on all applicants.</p> <p>The board does not have formal reciprocity agreements with any other state.</p> <p><i>Code of Alabama 1975, § 34-15B-6(g)</i></p>
Renewals	<p>Certificates of registration, seals and authorizations for registered interior design status expire and become invalid on the 30th day of September following their issuance or renewal. Certificates not renewed by September 30th become invalid October 1st.</p> <p>Certificates of registration, seals and authorizations for <i>registered interior design status</i> issued to those members of the armed forces of the United States do not expire until the 30th day of September following discharge or final separation. However, the board has no licensees in the registered interior design status.</p> <p><i>Code of Alabama 1975, § 34-15B-6(e) and § 34-15B-7(f)</i></p>
Continuing Education	<p>Interior Designers – 8 hours annually</p> <p>Registered Interior Designers with Seal and Authorization – 10 hours annually. (<i>The board has no licensees in the registered interior design status.</i>)</p> <p><i>Code of Alabama 1975, § 34-15B-5(10)</i></p>
Employees	<p>One contract employee, Bryant G. Williams, for administrative services on a part-time basis.</p>
Legal Counsel	<p>Matthew Y. Beam, Esquire – Private Attorney; Deputy Attorney General, of Gidiere, Hinton, Herndon & Christman 60 Commerce Street, Ste 904 Montgomery, AL 36104</p>
Subpoena Power	<p>Yes, both witnesses and documentary evidence by means of discovery as provided in the Alabama Rules of Civil Procedure.</p> <p><i>Code of Alabama 1975, § 34-15B-5(12)</i></p>

Internet Presence	www.idboard.alabama.gov The board's website contains the following information: <ul style="list-style-type: none"> • Board members • State Law • Rules and Regulations • Forms and applications • Licensee roster • Fee schedule • Reinstatement • Related links • Procedures for reporting violations The website also contains an 'announcements' tab, which contains information such as updates to state law or the board's rules, and a 'contact us' tab.
Attended Board Member Training	One board member
<u>Financial</u>	
Source of Funds	Registration Fees <i>Code of Alabama 1975 § 34-15B-5(16) and § 34-15B-12</i>
State Treasury	Yes, operates from one special revenue fund <i>Code of Alabama 1975 § 34-15B-12</i>
Required Distributions	None
Unused Funds	Retained by the Board

SIGNIFICANT ISSUES

Significant Issue 2009-1 – The board by administrative rule has improperly made the notice and response aspects of its disciplinary process more restrictive on its licensees than the interior designer licensing law. The law requires the board to give not less than 45 days notice of charges and hearing, with 30 days allowed for response. The board's administrative rule requires the board to give not less than 30 days notice of a hearing, with 15 days allowed for response. Consequently, the administrative rules are not in harmony with the law.

In his opinion 2006-147, the Attorney General states in reference, "The administrative rules and regulations, however, must be consistent with the constitutional or statutory authority by which they are promulgated, and a rule or regulation created out of harmony with the statute is null and void. *Ex parte State Dep't of Human Resources*, 548 So. 2d 176, 178 (Ala. 1988)"

The *Code of Alabama 1975*, § 34-15B-11(a) states, “Any time that the board has reason to believe that an individual holding a certificate of registration or authorization as a registered interior designer is subject to discipline, notice of the charges placed against the individual and the time and place of the hearing of such charges by the board shall be served on the accused by those rules prescribed by the Alabama Rules of Civil Procedure, ***not less than 45 days before the date fixed for the hearing.*** The notice shall inform the individual that he or she is ***entitled to respond to the charges within 30 days***, be represented by counsel of his or her choosing at the hearing, have witnesses testify in his or her behalf at the hearing, confront and cross-examine witnesses at the hearing, and testify in his or her behalf at the hearing.”(Emphasis added)

The board’s Rule 485-X-9-.01(1) states, “The registrant shall be given ***not less than thirty (30) days notice of any hearing*** to consider suspension, revocation, or issuance of private or public reprimand of registration...”(Emphasis added). Rule 485-X-8-.05(1) states “A written response to the alleged violations ***is required from the respondent within fifteen (15) working days*** of date of the notice.” (Emphasis added)

Significant Issue 2009-2 – Accessibility to the board’s offices and its administrator is limited.

The board’s office is located within an interior design warehouse showroom in Birmingham, Alabama. There is no sign to indicate that the board’s office is located within the business. The physical office is not open on a daily basis.

The board’s office does not have a landline phone, and the phone number listed on the board’s Internet website is a board-owned cell phone kept in the possession of the administrator. A recorded message on the phone states that, “The board is not available to take your call, but leave a message and it may take a couple of days before someone gets back with you.”

Initially, the administrator stated in an email to the examiner that he doesn’t have regular hours at the office, and that he plays it day by day because it is a part-time office and he has to be there more on some days than others, depending on the amount of the work that has to be done. After notification that this condition could be significant issue in the sunset report, the administrator responded in a subsequent clarifying email to the examiner in which he stated that the office hours are at least Monday, Wednesday, and Friday from 8:00 AM through 1:00 PM and have been for the last five years. He stated in the email that, “During these times the phone and e-mail are monitored. The office may be open more than these times, but never less. However, the administrator’s presence in the physical office is based upon numerous factors including events, needs, license renewal date, etc.” He further stated in referring to persons attempting to contact the board that, “...the “office” is officially open on the standard days and times, and I am available to take their calls and give them assistance, but since I am not physically sitting in the office, I only charge the board for the time I spend on the phone and/or helping the caller.”

Significant Issue 2009-3 - Current law limits the practice of all persons currently licensed by the board to buildings of less than 5,001 square feet. Unlicensed persons, who can engage in the practices of interior design so long as they do not use the title, are not subject to this limit. There are two levels of interior designers provided in the interior designer licensing law, Interior Designers certified under the requirements of the *Code of Alabama 1975*, Section 34-15B-13 and Registered Interior Designers registered under the requirements of the *Code of Alabama 1975*, Section 34-15B-7.

Persons licensed as Interior designers are authorized by law to practice in buildings of 5,001 square feet or less and must pass the National Council for Interior Design Qualification (NCIDQ) examination or its equivalent, as approved by the board. Persons licensed as Registered Interior Designers, who can practice in buildings of any size, must pass a “sealed level” examination developed by a special committee described in the law. The “sealed level” examination has not been developed, and there are no Registered Interior Designers. Consequently, there are no licensees who are authorized by the law to practice in buildings of more than 5,001 square feet.

The board’s administrator, in responding to the issue of the board’s licensees practicing in buildings of more than 5,001 square feet, stated, “Interior designers are not permitted to do so, and to our knowledge, no one does. On projects of such size an interior designer would be working under the supervision of an architect.” He further stated that, “Since there are no provisions in the law for enforcing that issue, the board doesn’t pursue it. However, the board makes sure that all registered designers are informed of that limitation. They accomplish this by sending out notifications to all new registrants, annual law updates, and having the law on the website. The Board is constantly reminding the registered designers of the law, and that it is their responsibility to know their limitations and responsibilities. The board always reminds the registrants that they can contact the Board office for any information on this, and any, subject.”

The *Code of Alabama 1975*, Section 34-15B-13 provides the following:

(a) An individual holding a certificate of registration shall not be subject to the 2,500 square feet limitation or other limitations contained in subsection (b) of Section 34-2-32 [exemption in the licensing law for architects]. **An individual holding a certificate of registration shall be authorized to practice interior design in any building or space within a building consisting of a total area of less than 5,001 square feet, and not intended for assembly occupancy, except schools, churches, auditoriums or other buildings intended for assembly occupancy of people.** Provided, nothing shall prevent an interior designer from preparing designs, drawings, and specifications for selection, use, or location of finishes, materials, equipment, furnishings, furniture, fixtures, and personal property; or administering contracts for fabrication, procurement, or installation in connection with finishes, materials, equipment, furnishings, furniture, and personal property. Notwithstanding the provisions of subsection (c) of Section 34-2-32, any and all officials of this state or of any city, town, or county charged with the enforcement of laws, ordinances, or regulations relating to the construction or alteration of buildings are hereby authorized to accept or approve plans or specifications and issue permits on the same, prepared by any individual holding a certificate of registration, provided the plans or specifications are consistent with this subsection.

(b) **An individual holding a valid certificate of registration and further authorized as a registered interior designer shall be authorized to practice interior design in any building, regardless of square footage or usage,** and shall not be subject to any limitations contained in subsection (b) of Section 34-2-32.

The *Code of Alabama 1975*, Section 34-15B-3(4)b4 of the interior design licensing law [see appendices of this report] effectively allows the practice of interior design services in buildings of any size without being licensed by the board, so long as the practitioners do not title themselves as interior designers.

STATUS OF PRIOR FINDINGS/SIGNIFICANT ISSUES

All prior significant issues and findings have been resolved except for the following:

Prior Significant Issue 2006 -01 - Board Operating Under Previous Law –Not Aware of Current Law. On August 23, 2004, the Circuit Court of Jefferson County declared the Interior Design Practice Act (Acts of Alabama, Act No. 2001-660) to be unconstitutional. As a result, the board began operating under its previous law created by Acts of Alabama, Act No. 82-497.

To comply with the 1982 law, the board suspended enforcement of the 2001 law and appealed the circuit court's decision to the Alabama Supreme Court.

On April 18, 2006, a sunset bill for the board was signed into law as *Acts of Alabama*, Act No. 2006-518 [see appendices]. The sunset legislation preserved the board's 2001 law, with amendments to allow individuals, partnerships, and corporations to provide services covered by the law without being licensed by the board, so long as these entities do not imply or indicate that they are "interior designers". When asked how the board's operations would be altered by the 2006 law, the board indicated that it was not aware of the 2006 law.

Status October 2008 - Since the board's last hearing before the Sunset Committee in 2007, the Alabama Supreme Court affirmed the Circuit Court's ruling that the board's practice act embodied in *Acts of Alabama*, Act 2001-660 was unconstitutional.

On March 18, 2008, the attorney general rendered opinion #2008-055 [see appendices] to Senator Vivian Figures which states that, "Under the plain language of section 34-15B-3(4)b4 after the 2006 amendment [Act 2006-518], the Interior Design Act allows persons to engage in substantially the same activities that constitute the practice of interior design, so long as they do not call themselves "interior designers."

The attorney general's opinion also states that, "Because Act 2006-518 did not become effective until after the trial court struck down Act 2001-660, it is the opinion of this Office that the Board continues to function pursuant to Act 2006-518." The attorney general's opinion additionally states that, "The constitutional validity of the Interior Design Consumer Protection Act, post-Act 2006-518, is a matter for the courts to decide. It is the policy of this Office to refrain from deciding questions of constitutionality as this is the function of the courts."

In summary, as a result of the attorney general's opinion, the board is operating under the same licensing law that existed before the courts ruled it unconstitutional, but with a modification due to sunset legislation that enables unregistered persons to engage in the practices of interior design so long as they do not call themselves interior designers.

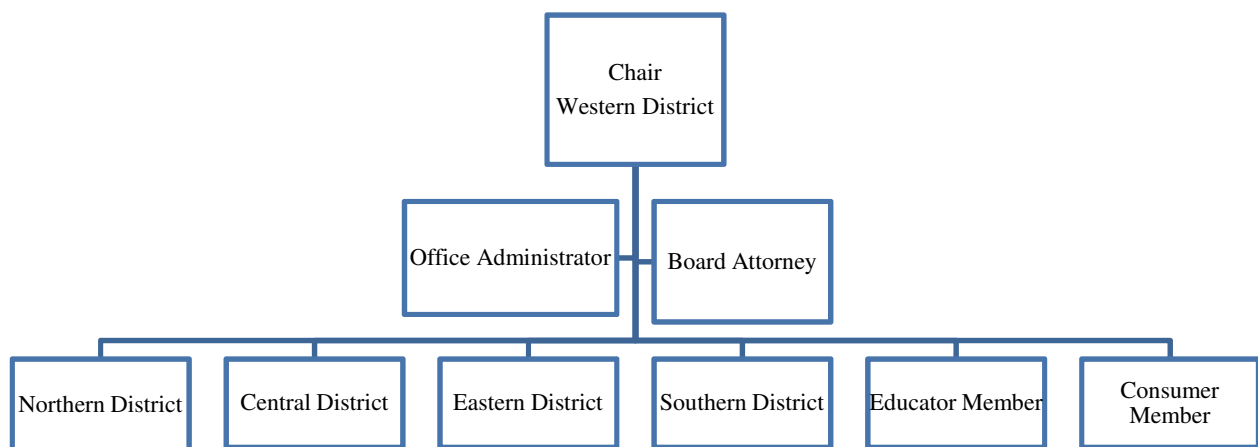
The board's chairman responded to our inquiries in a letter which indicates that the board is reestablishing its functions to comply with its current law as interpreted by the attorney general.

Current Status July 2009 - The board is operating under the 2006 licensing law modified by *Acts of Alabama*, Act. No. 2006-518, as recommended by the board's legal counsel.

In the 2009 Regular Legislative Session, HB491 by Representative Marcel Black, and SB 344 by Senators Jim Preuitt and Larry Means would have replaced the board's operating statutes. Neither bill was successful.

Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Minnesota, Missouri, Nevada, New Jersey, New Mexico, New York, Oklahoma, Tennessee, Texas, Virginia, Washington, D.C. and Wisconsin have some type of state-imposed regulation of interior design. Alabama's Practice Act and Connecticut's Title Act have been declared unconstitutional, and Texas and Oklahoma have legal challenges pending.

ORGANIZATION



PERSONNEL

The board contracts with Bryant G. Williams to act as administrator for the board. His compensation is \$10.00 per hour, not to exceed 20 hours per week, and not to exceed \$10,000 per year.

Members of the board also assist in carrying out the administrative functions of the board.

Legal Counsel

Matthew Y. Beam, attorney in private practice in Montgomery, Alabama serves as legal counsel for the board. Payment terms are \$120 per hour, not to exceed \$10,000 for the year.

PERFORMANCE CHARACTERISTICS

Number of Licensees per Employee - 277

Number of Persons per Licensee in Alabama and Surrounding States

	Population*	Interior Designers	Persons per Interior Designer
Alabama	4,661,900	277	16,830
Florida ²	18,328,340	1180	15,532
Georgia ²	9,685,744	434	22,317
Mississippi ¹	2,938,618	--	--
Tennessee ³	6,214,888	449	13,842

* U.S. Census July 1, 2008 Est.

¹Mississippi does not regulate the practice of interior design.

²The practice of interior design and the practice of architecture are regulated by the Board of Architecture and Design.

³Interior design is regulated by the Board of Architectural and Engineering Examiners.

Operating Disbursements per Licensee – \$111.48 (2008 fiscal year)

Notification to Licensee of Board Decisions to Amend Administrative Rules

The board complied with notification procedures prescribed in the Administrative Procedure Act, which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules. Licensees are not specifically notified of proposed changes.

COMPLAINT HANDLING

The *Code of Alabama 1975*, § 34-15B-11(a) and *Board Rules* 485-X-8-.01 through .05 provide procedures for receipt, documentation and investigation of complaints against licensees and disciplinary actions.

Complaint Process

Initial Documentation	<p>The board shall supply a complaint report form to aid in handling complaints, which shall be made in writing to the board and, when available and applicable, include documentation of the alleged violation. A copy of the complaint form shall be given to any registrant who is asked to respond to an allegation. The board shall notify, in writing, the individual who filed the complaint that the board is in receipt of the complaint, of any hearing and of the resolution of the alleged violation. The board may not accept anonymous complaints and/or incomplete forms.</p>
Investigation/Hearing	<p>After receipt of an alleged violation and/or complaint report form, the board shall conduct or cause to be conducted an investigation. The investigative committee consists of the chair, legal counsel, and a board member as appointed by the chair. Legal counsel is not a voting member of the committee. The board may also use or hire investigators to investigate complaints against registrants.</p> <p>The chair must first determine if the individual named in the complaint is a registrant. If so, the investigative committee shall determine if there is sufficient evidence of a violation of this chapter to make a probable cause determination. If a probable cause determination is made, the Deputy Attorney General Designee, or other individual designated by the Chairman, shall send an administrative complaint, including the grounds for disciplinary action and any consideration of suspension or revocation of registration, and notice of a hearing to the registrant's last known address. If the investigative committee determines there is no probable cause for a disciplinary hearing, then the case shall be considered closed and the file marked as "no probable cause found".</p> <p>Any time that the board has reason to believe that an individual holding a certificate of registration or authorization as a registered interior designer is subject to discipline, notice of the charges placed against the individual and the time and place of the hearing of such charges by the board shall be served on the accused by those rules prescribed by the Alabama Rules of Civil Procedure, not less than 45 days before the date fixed for the hearing.</p> <p>The notice shall inform the individual that he or she is entitled to respond to the charges within 30 days, be represented by counsel of his or her choosing at the hearing, have witnesses testify in his or her behalf at the hearing, confront and cross-examine witnesses at the hearing, and testify in his or her behalf at the hearing. The board may provide further for any procedure not herein enumerated that is consistent with the Alabama Administrative Procedure Act. At the hearing, the board shall appoint a hearing officer. The individual board member who assisted with the investigation of the complaint shall not vote on the disciplinary action to be taken. Administrative Hearings shall proceed in accordance with the Alabama Rules of Civil Procedure.</p>

Resolution/Disposition	<p>After hearing all the evidence and receipt of a recommendation from the hearing officer, the Board shall vote to determine what disciplinary action, if any, shall be taken. The board will issue the final findings of fact and conclusion of law.</p> <p>Any disciplinary action adjudged appropriate by the board shall be transmitted to the registrant within thirty (30) days following the board's final order in the case. The Board may, at its discretion, after suspending a certificate or issuing a private or public reprimand, require in writing that the registrant obtain further education and/or training as is necessary to the satisfaction of the board to remediate any professional deficiencies that contributed to suspension before registration may be reinstated.</p> <p>Appeals of the decision of the board shall be made in accordance with the Alabama Administrative Procedure Act governing appeals in contested cases.</p>
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Schedule of Complaints

Beginning in the fall of 2003, the board discontinued processing complaints, as requested by the Sunset Committee. When litigation against the board was concluded by the Alabama Supreme Court in 2007 (see appendices) and the attorney general issued his opinion concerning the board's operating authority in March 2008 (see appendices), the board was again able to process complaints. However, it is the board's policy not to accept and investigate anonymous complaints. Since all complaints in 2008 were anonymous, no action was taken. (The prior sunset report states that all the complaints received in FY05, 06, and 07 were also anonymous and no action was taken). As of July 2009 the board has not received any complaints.

REGULATION IN CONJUNCTION WITH OTHER ENTITIES

Architects, engineers, general contractors, and home builders are each licensed by Alabama professional licensing boards to perform professional practices that overlap the practice of interior design.

The *Code of Alabama 1975*, Section 34-15B-7 requires that the examination committee charged with the development of a sealed level examination for registered interior designers shall be composed of three members appointed by the board; three members appointed by the Alabama State Board of Registration for Architects; two members who are registered professional engineers, one of whom shall be appointed by the board and one of whom shall be appointed by the Alabama State Board of Registration for Architects; one member shall be a code official appointed by the Code Officials Association of Alabama; one member shall be a representative from the National Council for Interior Design Qualification (NCIDQ), a nonvoting ex officio member and the Chair of the Senate Committee on Rules, another nonvoting ex officio member. (*The examination has not been developed.*)

The *Code of Alabama 1975*, Section 34-15B-9 provides exemptions for the practice of interior design by architects, licensed home builders, general contractors, and engineers when such practice is incidental to their otherwise licensed professions and projects.

SMART BUDGETING

We routinely review state agency performance goals and objectives as presented in the board's SMART reports for adherence to the following standards:

- A goal is a long-term, measurable performance target with a target accomplishment date.
- Each goal must be accompanied by one or more directly related objectives designed to show progress toward achieving the goal.
- Objectives are annual numerical target levels of performance.
- The degree of achievement of the objectives should be reported as numerical data in the performance reports.
- Data reported anywhere in the SMART documents can be reproduced at any time from records on hand. The records should be available for audit.
- The methods for producing the data presented in the SMART documents should be recorded in writing so as to allow staff to complete the SMART documents over time in a consistent manner. The records of methods used should be available for audit.

We reviewed the board's SMART reports for the 2008 and 2009 fiscal years for compliance with these standards and present the following observations.

GOALS (FY 2008)		COMMENTS		
Ensure that only qualified persons are approved to practice interior design and to use the title of interior designer in the State of Alabama.		The goal is a statement of work to be done and does not address the agency's performance in carrying out the work. The goal is too abstract and undefined to be feasibly measured. There is no long-term measurable target level of performance. Also, there is no directly related objective, and therefore, progress toward achieving this goal does not appear on the commission's performance report.		
OBJECTIVES (FY 2008)	UNIT OF MEASURE	REPORTED PERFORMANCE	PROJECTED	COMMENTS
(O1-Efficiency) Utilize part-time administrative assistant to staff board office	Hours	989.75	936	<p>There is no measurable target level of performance, only a statement of hours worked</p> <p>This is a method of achieving performance rather than a measure of performance achieved.</p> <p>Data reported on the performance report could not be verified.</p>

(O2-Efficiency) Budget divided by number of registrants	Dollars	177	175	Objective appears appropriate. Would be more relevant if actual expenditures rather than budgeted expenditures were used. Data presented on the performance report could not be verified.
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GOALS (FY 2009)		COMMENTS		
Keep administrative budget increases to not more than 5% per year (with the exception of legal fees) through FY2011.		Goal appears appropriate and measurable. There is a related objective, and progress toward this goal will appear on the performance report.		
OBJECTIVES (FY 2009)	UNIT OF MEASURE	REPORTED PERFORMANCE (1 st quarter / 2 nd quarter)	TARGET	COMMENTS
(O1-Efficiency) Expenditures divided by number of registrants	Dollars	26.91 / 21.53	\$164	Objective appears appropriate. Quarterly amounts reported unnecessarily, since the target is annual. Quarterly data reported on the performance report could not be verified.

FINANCIAL INFORMATION

Funds/Account Description

Funds are derived from registration fees. All fees received by the board are deposited into a special revenue fund in the State Treasury. Year-end balances are retained by the board.

Schedule of Fees

FEE CHARGED	STATUTE	RULE	AMOUNT
Interior Designer Registration Application and Review Fee (Postmarked prior to October 1, 2008)	34-15B-5(16)*	Appendix 1 - Fee Schedule	\$50.00

FEE CHARGED	STATUTE	RULE	AMOUNT
Interior Designer Registration Application and Review Fee (Effective October 1, 2008)	34-15B-5(16)*	Appendix 1 - Fee Schedule	\$200.00
Interior Designer Annual Renewal Fee (Postmarked by Sept. 30 of each year) ¹	34-15B-6(e)**	Appendix 1 - Fee Schedule	\$125.00
Late Fee in addition to Renewal Fee (Postmarked October 1 or later)	34-15B-5(16)*	Appendix 1 - Fee Schedule	\$50.00
Inactive Status Registration Fee	34-15B-5(14)	Appendix 1 - Fee Schedule	\$50.00
Reactivation from Inactive Status Fee	34-15B-5(4)**	Appendix 1 - Fee Schedule	\$125.00
Fee for Records Reproduction (printed or electronic)	34-15B-5(16)*	Appendix 1 - Fee Schedule	0.25 per page
Replacement Certificate Registration	34-15B-5(16)*	Appendix 1 - Fee Schedule	\$50.00
Copy of Administrative Code (printed or electronic)	34-15B-5(16)*	Appendix 1 - Fee Schedule	\$20.00
Roster (Printed or Electronic)	34-15B-5(16)*	Appendix 1 - Fee Schedule	\$25.00
Mailing Labels (printed or electronic)	34-15B-5(16)*	Appendix 1 - Fee Schedule	\$50.00
Administrative Fines for Violations ²	34-15B-10 Not to exceed \$2,000.00	485-X-8-.01(3) Appendix 1 - Fee Schedule	Not to exceed \$2,000.00

*Assess Fees

**Amount to be determined by the Board.

¹Combined Renewal Fee of \$100 and Continuing Education Fee of \$25

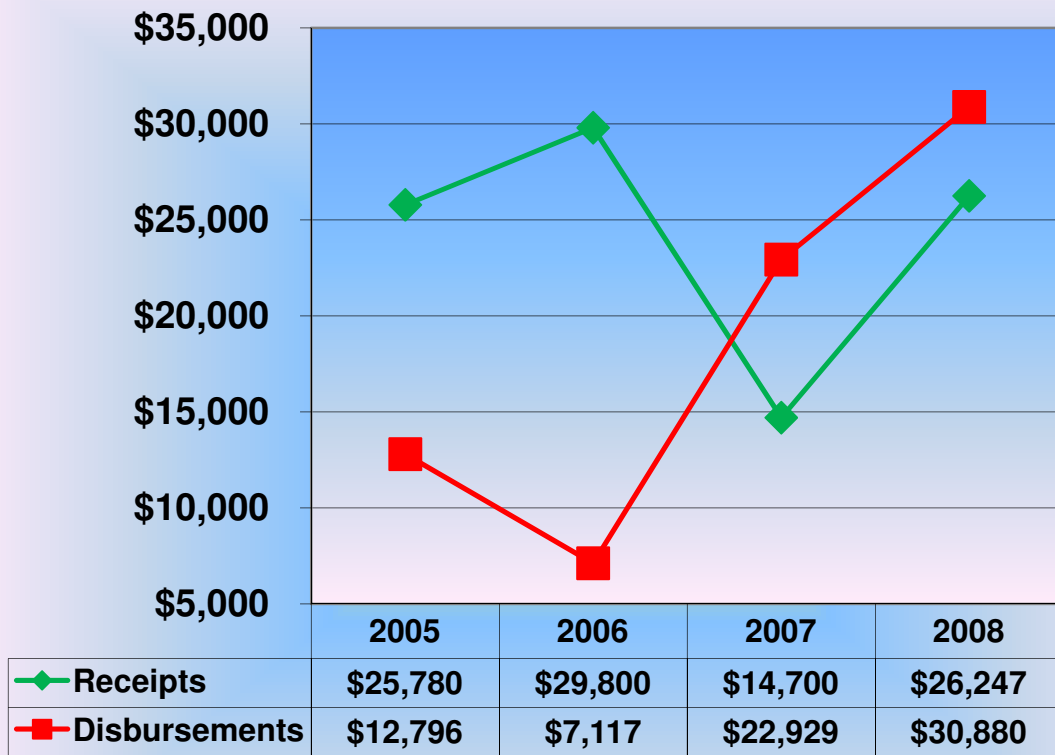
²Same as “Fee for Hearings before the Board.”

Schedule of Receipts, Disbursements, and Balances

October 1, 2005 through September 30, 2008

	FY2008	FY2007	FY2006	FY2005
<u>Receipts</u>				
Licensing Fees	\$ 26,246.93	\$ 14,700.00	\$ 29,800.00	\$ 25,780.00
Total Receipts	26,246.93	14,700.00	29,800.00	25,780.00
<u>Disbursements</u>				
Personnel Costs	9,840.00	-	-	800.00
Employee Benefits	752.77	-	-	61.20
Rentals and Leases	392.37	378.52	312.77	404.54
Utilities and Communications	989.03	1,047.75	1,212.70	1,135.05
Professional Services	14,222.56	15,344.65	1,273.36	3,734.42
Supplies, Materials, and Operating Costs	4,683.46	4,650.18	4,317.96	5,211.07
Other Equipment Purchases	-	1,508.00	-	1,450.00
Total Disbursements	30,880.19	22,929.10	7,116.79	12,796.28
Excess (Deficiency) of Receipts Over Disbursements	(4,633.26)	(8,229.10)	22,683.21	12,983.72
Cash Balance at Beginning of Year	63,435.27	71,664.37	48,981.16	35,997.44
Cash Balance at End of Year	58,802.01	63,435.27	71,664.37	48,981.16
Reserved for Unpaid Obligations	(3,880.21)	(3,477.20)	(6,450.20)	(6,532.82)
Unreserved Cash Balance at End of Year	\$ 54,921.80	\$ 59,958.07	\$ 65,214.17	\$ 42,448.34

Operating Receipts vs. Operating Disbursements (Chart)



APPENDICES

SMART Performance Reports

Quarterly Performance 2008

Agency:	318 - Interior Design, Alabama State Board of Registration for				Program:	653 - PRO AND OCCU LICENSING AND REG					
Organization:	-				Activity:	-					
Mission:	Regulate and license individuals' practice of Interior Design and the use of title "Interior Designer" (Alabama Code Section 34-15B)										
Workload Measures and Quarterly Projections											
		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Workload Measure		Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
W1: Number of Registered Interior Designers Served		268	281	275	268	280	273	285	282	285	0

Agency: 318 - Interior Design, Alabama State Board of Registra				Program: 653 - PRO AND OCCU LICENSING AND REG								
Organization: -				Activity: -								
Key Goal:												
Goal 1	Ensure that only qualified persons are approved to practice interior design and to use the title of interior designer in the State of Alabama.								Governor's Priority:	4		
Objectives and Quarterly Targets:												
Performance Measures			First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives		Unit of Measure	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual
(O1-Efficiency) Utilize part-time administrative assistant to staff board office		Hours	234	339.5	234	243.25	234	256	234	243.75	936	989.75
(O2-Efficiency) Budget divided by number of registrants		dollars	187	178	182	187	179	183	175	177	175	177

How have policy decisions and budget determinations made by the governor and the legislature in the fiscal year 2007-08 affected your agency in meeting its desired accomplishments and services?
Continuation of SMART produces burdens in duplicate paperwork. We are a volunteer agency and had enough trouble keeping track of the regular paperwork required prior to SMART.
What administrative improvements did your agency make in fiscal year 2007-08 and what potential improvements do you foresee for future years? Include suggested changes in legislation or administrative procedures which would aid your agency in these improvements.
Hired a part-time administrative assistant. Unfortunately, he is on track to become a registered designer and will no longer be allowed to work for our agency. I do not see any time in the foreseeable future that we could afford to hire an administrator who isn't an interior designer concerned with advancing the profession and willing to volunteer many hours uncompensated. The constant search for qualified and consistent help is a great detriment to the smooth operation of the agency. Because the board makes all of the regulatory decisions, I do not see the conflict of a regulated professional being an administrative assistant to a volunteer board. Legislation should be considered to remove this prohibition from small agencies.

Quarterly Performance 2009

Agency:	318 - Interior Design, Alabama State Board of Registration for			Program:	653 - PRO AND OCCU LICENSING AND REG					
Organization:	-			Activity:	-					
Mission:	Regulate and license individuals' practice of Interior Design and the use of title "Interior Designer"									
Workload Measures and Quarterly Projections										
	First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Workload Measure	Projected	Actual	Projected	Actual	Projected	Actual*	Projected	Actual*	Projected	Actual*
W1: Number of Registered Interior Designers Served	--	270	--	277	--		--		305	
W2: Number of complaints received per year	--	0	--	0	--		--		5	
* Actual workload data is not currently available for this quarter.										

Agency: 318 - Interior Design, Alabama State Board of Registra				Program: 653 - PRO AND OCCU LICENSING AND REG								
Organization: -				Activity: -								
Key Goal:												
Goal 1	Keep administrative budget increases to not more than 5% per year (with the exception of legal fees) through FY2011.								Governor's Priority:		4	
Objectives and Quarterly Targets:												
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual		
Objectives		Unit of Measure	Target	Actual	Target	Actual	Target	Actual±	Target	Actual±	Target	Actual±
(O1-Efficiency) Expenditures divided by number of registrants		dollars	--	26.91	--	21.53	--		--		164.00	
* Actual performance data is not currently available for this quarter.												

Statutory Authority (includes Act 2006-518)

CHAPTER 15B. ALABAMA INTERIOR DESIGN CONSUMER PROTECTION ACT.

§ 34-15B-1. Short title.

This chapter shall be known and may be cited as the "Alabama Interior Design Consumer Protection Act."

CREDIT(S)

(Act 2001-660, p. 1365, § 1.)

§ 34-15B-2. Legislative Findings.

The Legislature finds and declares that interior design is a learned profession, involving issues such as indoor pollution, fire safety, space planning, and requirements of special needs citizens. For this is a matter of public interest, safety, protection, and concern that persons practicing interior design merit and receive the confidence of the public and that only qualified persons be permitted to practice interior design in the State of Alabama. This chapter shall be liberally construed to carry out these purposes.

CREDIT(S)

(Act 2001-660, p. 1365, § 2.)

§ 34-15B-3. Definitions.

As used in this chapter, the following words and phrases shall have the following meanings:

(1) Board. The Alabama State Board of Registration for Interior Design.

(2) Certificate of registration. The title of the license issued by the board to an individual in order to authorize the individual to engage in the practice of interior design in the State of Alabama.

(3) Interior designer. A person who is engaged in, or offers to engage in, the practice of interior design in this state, and who has been issued a certificate of registration by the board in compliance with this chapter.

(4) Practice of interior design. a. The performance of, or offering to perform, services for a fee or other compensation, directly or indirectly, to another person, or to a partnership, corporation, or other legal entity, in connection with the design, utilization, furnishing, or fabrication of elements in interior spaces in buildings, homes, and related structures. These services include, but are not limited to, the following: Programming the functional requirements for interior spaces; planning interior spaces; preparing analyses of user needs for interior spaces; preparing designs, drawings, and specifications for selection, use, location, color, and finishes of interior walls, materials, equipment, furnishings, furniture, and personal property; administering contracts for fabrication, procurement, or installation in connection with reflected ceiling plans, space utilization, furnishings, or the fabrication of nonstructural elements within and surrounding interior spaces of buildings.

b. The practice of interior design shall not include any of the following:

1. Design of architectural and engineering interior construction relating to building systems, which includes building structural support, elevators, plumbing, heating,

ventilation, air conditioning, fire protection, and mechanical and electrical systems, except for specification of fixtures and lamps and their location within interior spaces.

2. Modification of existing building stairwells and elevator shafts.

3. Modification of existing building construction so as to alter the number of persons for which the means of egress of a building is designed.

4. The performance of consultation or services pursuant to selling, selecting, or assisting in selecting personal property or fixtures, such as, but not limited to, furnishings, decorative accessories, furniture, paint, wall coverings, window treatments, floor coverings, surface mounted lighting, or decorative materials, pursuant to a consultation or retail sale; installing or coordinating installation as part of the prospective retail sale or consultation; or providing computer-aided or other drawings for the purpose of retail sales or consultations, provided those drawings are for placements or material lists. Nothing herein shall prohibit any person from charging a fee for such services whether or not a consultation or retail sale is consummated. Provided, however, an individual, partnership, or corporation shall not use the title designations set forth in Section 34-15B-8 nor receive a certificate of registration without successful completion of the NCIDQ examination and/or a sealed level examination, as applicable, and as approved by the board. Services performed shall be subject to all fire, safety, building, and construction codes.

(5) Practicing interior design. Performing, or offering or attempting to perform, any service, work, act, or thing, within the scope of the definition of the practice of interior design.

(6) Registered interior designer. A person who is engaged in, or offers to engage in, the practice of interior design in this state, who has been issued a certificate of registration by the board in compliance with this chapter, who has been further approved by the board as a registered interior designer, and who has successfully passed a sealed level examination or an equivalent examination approved by the board. A registered interior designer may exercise all titles and authority issued by this chapter to both a registered interior designer and an interior designer. Registered interior designers may submit sealed stamped drawings, which reflect registered interior design status, to building officials in accordance with this chapter so long as the drawings do not include the design of items specifically excluded from the practice of interior design as defined in subdivision 4, unless the drawing utilizes, references, and incorporates documents prepared by architects, engineers, or other related professionals.

(7) Sealed level examination. An examination, regardless of its eventual title, approved by the board, and administered by an entity approved by the board, which includes testing on technical aspects of interior building systems, structural, framing, mechanical, plumbing, and electrical, as they relate to the profession of interior design.

CREDIT(S)

(Act 2001-660, p. 1365, § 3; Act 2006-518, p. 1192, § 2.)

§ 34-15B-4. Alabama State Board of Registration for Interior Design.

(a) There is hereby created the Alabama State Board of Registration for Interior Design, to be comprised of seven members appointed by the Governor in the manner set forth in this section. All persons serving as members of the Alabama State Board of Registration for Interior Designers pursuant to Section 34-15A-5, on August 1, 2001, shall immediately serve as interim board members of the Alabama State Board of Registration for Interior Design created by this chapter until members of the board are appointed under this section. Within 90 days after August 1, 2001, the Governor shall appoint the initial seven members in the manner set forth below to replace the interim members.

(b) Of the seven members appointed by the Governor within 90 days, two members shall be

appointed for initial terms of two years, two members shall be appointed for initial terms of three years, and three members shall be appointed for initial terms of four years. After the initial appointments, all subsequent appointments shall be for terms of four years, except an appointment to fill a vacancy, which shall be for the unexpired term only. No member shall serve more than two consecutive terms of office. All members shall continue to serve until a successor is appointed.

(c) For continuity purposes of the board, one of the seven board members initially appointed by the Governor within 90 days shall have served as an interim board member and member of the predecessor Alabama State Board of Registration for Interior Designers for a period totaling at least two years, but not more than six years. That board member shall be nominated by the statewide nominating committee as detailed below; shall serve an initial term of two years; and shall represent the district of his or her residence, as detailed in subsection (e), on the board. Upon completion of that board member's two-year term, the statewide nominating committee shall submit the names of two persons from that district to the Governor to fill the next four-year term from that district, as provided in subsection (e).

(d) The composition of the board shall be as follows:

(1) Five members of the board shall hold valid certificates of registration pursuant to this chapter, shall be engaged in the full time practice of interior design, and shall be appointed from districts as detailed in subsection (e), with the exception that five of the initial members shall have been registered as interior designers prior to August 1, 2001, pursuant to Chapter 15A of this title.

(2) One member shall be a professional educator, who teaches in a college or university level interior design program; and one member shall be a consumer who does not hold a certificate of registration.

(3) Of the preceding seven members, at least one must be a member of a minority race.

(e) The five members of the board holding valid certificates of registration, and appointed by district, shall be appointed as follows:

(1) Five districts shall be created: Northern; Central; Western; Eastern; and Southern. One person holding a valid certificate of registration shall be appointed from each district.

(2) The Northern District shall be comprised of Lauderdale, Colbert, Lawrence, Limestone, Morgan, Cullman, Marshall, Madison, Jackson, DeKalb, Cherokee, Etowah, Calhoun, and Cleburne Counties.

(3) The Central District shall be comprised of Blount, Jefferson, St. Clair, and Talladega Counties.

(4) The Western District shall be comprised of Marion, Winston, Lamar, Fayette, Franklin, Walker, Pickens, Tuscaloosa, Sumter, Greene, Hale, Bibb, Perry, Dallas, Marengo, Choctaw, Lowndes, Shelby, and Wilcox Counties.

(5) The Eastern District shall be comprised of Randolph, Clay, Chilton, Coosa, Tallapoosa, Chambers, Autauga, Elmore, Lee, Macon, Montgomery, Bullock, Pike, Coffee, Dale, Henry, Barbour, Russell, and Crenshaw Counties.

(6) The Southern District shall be comprised of Butler, Covington, Conecuh, Escambia, Houston, Monroe, Clarke, Washington, Mobile, Geneva, and Baldwin Counties.

(7) Within 30 days from August 1, 2001, the chair of the interim board shall notify in writing every individual registered as an interior designer pursuant to Chapter 15A of this title, and every individual holding a valid certificate of registration under this chapter, who resides in the foregoing districts of the time and place for a district nomination meeting. The purpose of the district nomination meeting shall be for the selection of members to a statewide nominating committee. The district nomination meeting shall be held within 40 days from August 1, 2001.

(8) At the district nomination meetings, the members of each district shall select a chair for their respective districts for the meeting, shall proceed according to Robert's Rules of Order, as

most recently revised, and shall select one person to serve on the statewide nominating committee. The person may be selected by a plurality of the vote and he or she shall be registered as an interior designer pursuant to Chapter 15A of this title, or hold a valid certificate of registration under this chapter, and reside in the district.

a. The statewide nominating committee shall be composed of one person from each of the foregoing districts. Each person selected for the statewide nominating committee shall immediately notify the chair to the interim board of his or her selection.

b. Within 10 days after its selection, the statewide nominating committee shall meet at a time and place scheduled by the chair of the interim board and do all of the following:

1. Select a chair for the meeting, and proceed according to Robert's Rules of Order, as most recently revised.

2. Select the names of two persons from each district who hold a valid certificate of registration and reside in the districts and send those names and the name of the initial member detailed in subsection (c) to the chair of the interim board, who shall submit the names to the Governor.

c. The Governor shall then appoint one of the two persons from each of the five districts and the initial board member detailed in subsection (c) so nominated to the board. If no appointment is made within 90 days of August 1, 2001, or within 90 days of the end of a board member's term, the statewide nominating committee shall select a new board member from the names of the two persons that the board submitted to the Governor.

(9) Excluding the interim board, each board member nominated by the statewide nominating committee shall reside in the district from which he or she was appointed.

(10) Initial nominations to the board shall be submitted by the statewide nominating committee to the Governor within 60 days of August 1, 2001. Thereafter, the statewide nominating committee shall submit the names of two persons to the Governor in the foregoing manner no later than 60 days of the expiration of a board member's term, or no later than 60 days of any vacancy on the board.

(11) A statewide nominating committee shall be elected in the foregoing manner every four years for the purpose of filling any vacancies or expired terms which may occur after the initial appointments to the board. The statewide nominating committee shall be convened, by call of the chair of the statewide nominating committee or notice from a majority of the members thereof, as soon as practical whenever a vacancy occurs on the board or at any time within 60 days preceding the expiration of the board member's term. After the initial appointments referenced in subsection (a), all future appointments to the board shall be made in the manner set forth herein. If a vacancy occurs on the statewide nominating committee, the chair of the district where the vacancy has occurred shall schedule a meeting and the members of that district who hold a valid certificate of registration shall select a person holding a valid certificate of registration from that district to fill the vacancy. After a period of one year, only persons holding a valid certificate of registration under this chapter may vote in a district nomination meeting or serve upon the statewide nominating committee.

(f) The educators and consumer members of the board shall be selected by the Governor within 90 days of August 1, 2001, with or without input from the statewide nominating committee; provided, however, neither of the remaining two members of the board may be employed in the fields of construction, architecture, engineering, interior design-interior decorating or any related field, other than teaching in a college or university level interior design program.

(g) The Governor may remove any member of the board for misconduct, incapacity, incompetence, or neglect of duty after the member so charged has been served with a written notice of the same and has been given an opportunity to be heard by the Governor. Absence from any three

consecutive meetings of the board, without cause acceptable to the Governor, shall be deemed cause for removal of any member.

(h) Each member of the board shall receive the same per diem, travel, and expense allowance as is paid by law to state employees for the time spent in the performance of his or her duties and in necessary travel.

(i) The board shall hold two or more meetings per year for the purpose of performing its duties pursuant to this chapter. A simple majority of the members of the board shall constitute a quorum at any meeting. A simple majority vote of the members present shall be sufficient to transact the business of the board. At the initial meeting of the board, to be convened by the Governor within 30 days after the initial appointments are made, the board shall elect a chair from among its members. Thereafter, a chair shall be elected at the first meeting of the board held after October 1 of the following year; the previous chair shall continue to serve until a successor is elected. Vacancies in such chair position shall be filled by act of the board.

(j) The chair may appoint a full-time or part-time executive director or administrative assistant to the board, with the consent of the majority of the members of the board. The executive director or administrative assistant shall serve at the pleasure of the board. The executive director or administrative assistant's salary shall be set by the board, and he or she shall be the executive officer to the board, but shall not be a member of the board. The board, by majority vote of its members, may employ additional persons, who shall serve at the pleasure of the board, to assist the board and the executive director or administrative assistant in the keeping of the records and in the performance of its duties, subject to available funding.

CREDIT(S)

(Act 2001-660, p. 1365, § 4.)

§ 34-15B-5. Powers and duties of the Board.

The board shall perform the following duties, subject to the other provisions of this chapter:

(1) Administer fully this chapter and any rules, regulations, or guidelines promulgated by the board pursuant to this chapter.

(2) Prescribe, make, adopt, and amend such rules and regulations pursuant to the Alabama Administrative Procedure Act as the board deems necessary to carry out the provisions of this chapter.

(3) Institute and conduct hearings involving charges against individuals issued a certificate of registration or authorized by the board as registered interior designers, as further provided in this chapter.

(4) Issue seals and/or certificates of registration to individuals approved by the board as registered interior designers in accordance with this chapter for which an annual fee, in an amount to be determined by the board, shall be assessed and collected.

(5) Specify the design of official seals to be used by persons authorized as registered interior designers by the board. Each person authorized as a registered interior designer shall purchase from the board such seal with which he or she shall identify all plans, specifications, drawings, reports, or related documents prepared or issued by him or her. The seal shall contain the name of the person authorized as a registered interior designer together with any number or identifying information issued by the board. No individual shall use a seal unless the individual at that time is then authorized as a registered interior designer, including all required renewals thereof.

(6) Institute legal proceedings for violations of this chapter.

(7) Grant, deny, revoke, suspend, or reinstate certificates of registration and/or seals and authorizations issued to registered interior designers in conformity with this chapter.

(8) Keep a record of its proceedings and make an annual report thereon to the Governor and the Legislature.

(9) For the purpose of enforcing this chapter, conduct investigations and hold hearings concerning any matter covered by this chapter at any time or place within the State of Alabama; administer oaths and affirmations, examine witnesses, and receive evidence; and seek legal or equitable relief from the state circuit courts against persons who violate this chapter.

(10) Establish standards and requirements of continuing education as a prerequisite to the renewal of a certificate of registration and, if applicable, the renewal of authorization as a registered interior designer on and after August 1, 2001.

(11) Maintain an official roster showing the name, registration number, and address of all individuals receiving a certificate of registration and/or seal and authorization as a registered interior designer from the board, together with the date, term of the issuance, and the place or places of business where each respective individual is engaged in the practice of interior design, and a record of all renewals, revocations, suspensions, reinstatements, or other actions taken in regard to such persons.

(12) When necessary, require the attendance of witnesses and the production of all necessary papers, books, records, documentary evidence, and materials in any hearing, investigation, or other proceeding before the board, by means of discovery as provided in the Alabama Rules of Civil Procedure.

(13) Employ attorneys, accountants, and other persons as may be necessary to assist the board in carrying out this chapter when there is a need for such services and when funds are available for such services.

(14) Adopt rules providing for individuals who have previously obtained a certificate of registration and/or authorization as a registered interior designer to be classified inactive and to avoid the payment of annual fees so long as these individuals do not engage in the practice of interior design during inactive status.

(15) Issue certificates of registration in accordance with this chapter for which an annual fee, in an amount to be determined by the board, shall be assessed and collected.

(16) Establish procedures for and assess fees for the administration of this chapter, by administrative rules, including, but not limited to, the following items: The application and examination of applicants for certificates of registration; the application and examination of applicants for registered interior designer authorization; late fees; continuing education; and hearings before the board.

CREDIT(S)

(Act 2001-660, p. 1365, § 5.)

§ 34-15B-6. Qualifications for certificate of registration.

(a) Applications for certificates of registration may be submitted only on forms prescribed and furnished by the board. The board shall promptly notify any applicant of the requirements for receipt of a certificate of registration and the schedule of fees established by it for receipt of a completed application.

(b)(1) The board may issue a certificate of registration authorizing an individual to engage in the practice of interior design and use the title of interior designer in the State of Alabama, only if:

a. The applicant is determined by the board to be of good moral character.

b. The applicant has successfully passed the National Council for Interior Design Qualification (NCIDQ) examination, or an equivalent examination, accepted and approved by the board, based on the standards set by the NCIDQ.

c. The applicant is a graduate of a Foundation for Interior Design Education Research (FIDER) accredited interior design program or its equivalent based on content standards set by FIDER.

(2) Each applicant shall have a combined minimum record of passing 48 semester or 60 quarter hours of board approved interior design education and practical experience under the guidance of a person holding a valid certificate of registration, or any individual approved by the board to total a minimum of six years.

(3) The board shall approve the equivalent interior design educational programs based on content standards set by FIDER and standards set by the NCIDQ or subsequent and equal accrediting and testing agencies.

(c) The board shall adopt rules providing for the review and approval of the aforementioned required full-time interior design experience and educational programs. For purposes of this section, full-time experience means at least 35 hours per week; 40 semester hours or 60 quarter hours in an approved collegiate level interior design program are equivalent to two years of education.

(d) Those applicants found qualified by the board shall be granted a certificate of registration which shall bear the registration number, the full name of the applicant, the date and term of issuance, the seal of the board, and the signature of the chair and the Secretary of State. Every certificate of registration shall be maintained in the possession of the individual to whom it is issued and shall be posted in the business office where he or she practices.

(e) Certificates of registration shall expire and become invalid on the 30th day of September following their issuance or renewal, unless renewed in accordance with this chapter. Certificates of registration issued to those who are in the armed forces of the United States shall not expire until the 30th day of September following the individual's discharge or final separation from the armed forces of the United States. Renewal may be accomplished at any time prior to and during the month of September by the payment of an annual fee, as prescribed by the board, through procedures as may be developed by the board.

(f) Notwithstanding the requirements of subsection (b), any individual registered as an interior designer on August 1, 2001, pursuant to Chapter 15A of this title shall be entitled, upon application to the board within a period of one year after August 1, 2001, to receive a certificate of registration under this chapter.

(g) Any individual registered or licensed to practice interior design in any state of the United States, other than the State of Alabama, who has successfully passed the NCIDQ examination or an equivalent examination, accepted and approved by the board, may apply for a certificate of registration which shall be issued if the individual otherwise complies with the requirements imposed on all applicants.

CREDIT(S)

(Act 2001-660, p. 1365, § 6.)

§ 34-15B-7. Authorization and seal; examination committee.

(a) Applications for registered interior designer authorization from the board may be submitted only on forms prescribed and approved by the board. The board shall promptly notify the applicant of the requirements for receipt of registered interior designer status and the schedule of fees established by the board for receipt of a completed application.

(b) The board shall approve individuals as registered interior designers, issue the design of an official seal indicating the same, and authorize the individuals to use the title of registered interior designer only if the applicant is determined by the board to have met each of the following qualifications:

(1) The applicant shall hold a valid certificate of registration prior to the submission of an application for registered interior designer status and the applicant must meet all qualifications required to receive and maintain a valid certificate of registration.

(2) The applicant shall be a graduate of an accredited interior design program of four years or more at a college or university approved by the board based on standards established by the NCIDQ and FIDER criteria or their equivalent.

(3) The applicant has successfully passed the sealed level examination.

(c)(1) One hundred eighty days after August 1, 2001, an examination committee shall be named and established as provided herein to develop the sealed level examination to be given to persons seeking authorization as a registered interior designer. The examination committee shall be composed of the following persons: Three members shall be appointed by the board; three members shall be appointed by the Alabama State Board of Registration for Architects; two members shall be registered professional engineers, one of whom shall be appointed by the board and one of whom shall be appointed by the Alabama State Board of Registration for Architects; one member shall be a code official appointed by the Code Officials Association of Alabama; and one member shall be a representative from NCIDQ who shall be a nonvoting ex officio member and who shall act in an advisory capacity to norm the examination and be an observer only to the content and selection of test questions. In addition, there shall be another nonvoting ex officio member, the Chair of the Senate Committee on Rules, who shall also be the initial chair of the committee and shall serve as a nonvoting moderator. After the initial chair no longer serves as Chair of the Senate Committee on Rules, the chair shall be selected by a majority vote of the Alabama Senate from its membership. Such selection shall be made quadrennially.

(2) Once members of the examination committee are initially appointed, they shall serve at the pleasure of the appointing authority. Any member of the examination committee who is replaced shall be replaced by a person from the same profession or category, and shall be selected as designated above and submitted by the relevant entity. The examination committee shall adjourn after the board accepts a final version of the sealed level examination, but the committee may be recalled by the board from time to time as the board may require. The examination shall be updated, at a minimum, every three years to be applicable to current codes and practices.

(3) The members of the examination committee shall be notified by the chair of the committee of a meeting of the examination committee to be held within 210 days of August 1, 2001. The presence of a simple majority of the appointees to the examination committee shall constitute a quorum to conduct business. The chair shall moderate all meetings of the examination committee and shall establish the dates for meetings. The committee shall proceed according to Robert's Rules of Order, as most recently revised.

(d) To develop the sealed level examination, the examination committee shall work with: (1) The NCIDQ and its nationally recognized testing service which specializes or has experience in certification and licensure examinations in the interior design profession; or (2) any other board approved entity with experience in administration of examinations in the interior design profession, and any other board approved, nationally recognized testing service which specializes or has experience in certification and licensure examinations in the interior design profession. The examination committee shall submit to the board a preliminary report on their activities within 30 days after their first meeting, and shall submit a final version of the sealed level examination, and other information as may be requested by the board, within time frames as may be mandated by the board. The board shall accept the final version of the sealed level examination presented by the examination committee after the final version of the sealed level examination is validated by the NCIDQ or the other board approved entity with experience in administration of examinations in the interior design profession. No sealed level examination may be given to applicants for registered

interior designer authorization unless the examination is approved by the board. In the event that no examination receives a majority vote of the examination committee, a report stating that fact as well as a full explanation of the areas of disagreement shall be submitted by the committee to mediation to assist in reconciling all points of disagreement among the examination committee members. A mediator shall be chosen from a list of names on the mediator's list of the Alabama State Bar Association in the following manner: (1) The architect members of the committee shall select one mediator; (2) the interior design members of the committee shall select one mediator; the final one mediator, who shall perform the mediation, shall be selected by the two mediators chosen pursuant to subdivision (1) and subdivision (2) herein. Upon reconciliation of the areas of disagreement, the examination shall be affirmed by the committee and submitted to the board.

(e) Those applicants found qualified by the board for registered interior design status shall be granted the design of a seal and official authorization containing the full name of the applicant, the date and term of issuance, the seal of the board, and the signature of the chair of the board. Every seal and authorization issued by the board shall be maintained in the possession of the individual to whom it is issued and the authorization shall be posted in the business office where he or she practices.

(f) Seals and authorizations for registered interior design status shall expire and become invalid on the 30th day of September following their issuance or renewal, unless renewed in accordance with this chapter. Seals and authorizations for registered interior design status issued to an individual who is in the armed forces of the United States shall not expire until the 30th day of September following the individual's discharge from the armed forces of the United States. Renewal may be accomplished at any time prior to and during the month of September by the payment of an annual fee, as prescribed by the board, through procedures as may be developed by the board.

(g) Any individual registered or licensed to practice interior design in any state of the United States, other than the State of Alabama, who has successfully passed the sealed level examination or equivalent examination, accepted and approved by the board, may apply for registered interior designer status which shall be issued if the individual otherwise complies with the requirements imposed on all applicants for registered interior design status.

CREDIT(S)

(Act 2001-660, p. 1365, § 7.)

§ 34-15B-8. Prohibited activities.

(a) Any individual, including, but not limited to, persons claiming an exemption pursuant to Section 34-15B-9, who, without possessing a valid certificate of registration as provided in this chapter, uses the title or term "interior designer" or "interior design," or who, within the context of the practice regulated by this chapter uses the phrase "Interior Designer," "Interior Design Consultant," or "Interior Design Services" in any sign, card, listing, advertising, business name, stationery, or in any other manner implies or indicates that he or she is an interior designer shall be guilty of a Class A misdemeanor.

(b) Any individual, including, but not limited to, persons claiming an exemption pursuant to Section 34-15B-9, who, without possessing a valid certificate of registration as provided in this chapter and without further specific approval by the board as a registered interior designer, uses the title or term "registered interior designer" or "registered interior design," or who, within the context of the practice regulated by this chapter uses the phrase "registered interior designer," "registered interior design consultant," or "registered interior design services" in any sign, card, listing, advertising, business name, stationery, or in any other manner implies or indicates that he or she is a registered interior designer shall be guilty of a Class A misdemeanor.

(c) Any individual who, without possessing a valid certificate of registration as provided in this

chapter, engages in the practice of interior design shall be guilty of a Class A misdemeanor.

(d) This section shall become effective January 1, 2002, the intent of the Legislature being that individuals shall have a reasonable period in which to comply with the provisions of this chapter.

CREDIT(S)

(Act 2001-660, p. 1365, § 8.)

§ 34-15B-9. Exemptions.

(a) The following persons are exempt from this chapter, but remain subject to the title restrictions contained in subsection (a) and subsection (b) of Section 34-15B-8.

(1) An individual practicing interior design under the supervision of a person having a valid certificate of registration.

(2) An architect licensed to practice in the State of Alabama may practice interior design; however, the architect may not use the title designations set forth in Section 34-15B-8 without successful completion of the NCIDQ examination and/or the sealed level examination approved by the board, as applicable.

(3) Licensed home builders and their employees whose activities are limited to the licensed builders' houses and projects and licensed general contractors and their employees whose activities are limited to the licensed general contractors' projects.

(4) Any person with a combination of the following education and full-time experience in the field of interior design on August 1, 2001:

For purposes of this subdivision, education means the successful completion of a minimum of 48 semester hours or 60 quarter hours in an approved collegiate level interior design program, plus documented full-time interior design experience approved by the board, totaling 10 years of combined education and full-time interior design experience. For purposes of this paragraph, "and full-time experience" means at least 35 hours per week; 40 semester hours in a collegiate level interior design program are equivalent to two years of education; and, 60 quarter hours in a collegiate level interior design program are equivalent to two years of education. To be entitled to any exemption under this subdivision an individual must document his or her experience and education on forms approved by the board and must register with the board within six months following August 1, 2001. Provided, the exemption shall terminate unless the individual claiming the exemption passes, prior to June 1, 2002, a code examination provided by the NCIDQ.

(5) Any person with 25 years of documented full-time experience, approved by the board, in the field of interior design on August 1, 2001. To be entitled to the exemption, an individual must document his or her experience on forms approved by the board and register with the board within six months following August 1, 2001.

(6) Any person making a plan or specification for, or administering the erection, enlargement, or alteration of any building upon any farm for the use of any farmer or for any building to be occupied and utilized by a healthcare facility as that term is defined in Section 22-21-260.

(7) Any person certified on August 1, 2001, by the National Kitchen and Bath Association, as a kitchen designer or bath designer, or both, whose activities involve the planning and execution of the design of complete residential kitchens or baths. The person shall not use the title designations set forth in subsection (a) or subsection (b) of Section 34-15B-8. Provided, the exemption shall terminate unless the individual claiming the exemption passes a code examination provided by NCIDQ prior to June 1, 2002, and documents to the board his or her National Kitchen and Bath Association certification within six months following August 1, 2001.

(8) Any person or legal entity purchasing products for its own use.

(b) Any person entitled to an exemption from this chapter shall remain subject to all other applicable provisions of Alabama law, including, but not limited to subsection (b) of Section 34-2-32.

(c) Nothing in this chapter shall prevent licensed professional engineers, or the employees or subordinates under their supervision or control, from performing interior design services which are incidental to the practice of engineering.

CREDIT(S)

(Act 2001-660, p. 1365, § 9.)

§ 34-15B-10. Penalties for violation of chapter.

The board may refuse to issue or may revoke a certificate of registration and/or authorization as a registered interior designer, suspend a certificate of registration or authorization as a registered interior designer for a period of time, issue a private or public reprimand to an individual possessing a certificate of registration or authorization as a registered interior designer, and assess and collect administrative fines not to exceed two thousand dollars (\$2,000) for violations of this chapter. In addition to the foregoing, the board may institute any legal proceedings necessary to enforce this chapter, or any combination of the foregoing, for any of the following conduct:

(1) Fraud, deceit, dishonesty, or misrepresentation, whether knowingly or unknowingly, in the practice of interior design or in obtaining any certificate of registration or authorization as a registered interior designer or other thing of value.

(2) Gross negligence, misconduct, or incompetency in the practice of interior design.

(3) Conviction of a felony until civil rights are restored.

(4) Habitual drunkenness or addiction and abuse, or both, of controlled substances without a doctor's prescription or in violation of the state controlled substances act.

(5) Incompetency, as adjudged by a court having jurisdiction.

(6) Directly or indirectly aiding or abetting in the practice of interior design by a person not duly authorized to practice interior design under this chapter.

(7) Practicing interior design in this state in violation of any standards of professional conduct as may be established by rule of the board.

(8) Practicing interior design in this state or in any other state or country in violation of the laws of that state or country.

(9) Failure to pay any fee or fine assessed by the board.

(10) Failure to comply with any order of the board.

CREDIT(S)

(Act 2001-660, p. 1365, § 10.)

§ 34-15B-11. Disciplinary action.

(a) Any time that the board has reason to believe that an individual holding a certificate of registration or authorization as a registered interior designer is subject to discipline, notice of the charges placed against the individual and the time and place of the hearing of such charges by the board shall be served on the accused by those rules prescribed by the Alabama Rules of Civil Procedure, not less than 45 days before the date fixed for the hearing. The notice shall inform the individual that he or she is entitled to respond to the charges within 30 days, be represented by counsel of his or her choosing at the hearing, have witnesses testify in his or her behalf at the hearing, confront and cross-examine witnesses at the hearing, and testify in his or her behalf at the hearing. The board may provide further for any procedure not herein enumerated that is consistent with the Alabama Administrative Procedure Act.

(b) In all cases of disciplinary action taken by the board, the accused may appeal the disciplinary action to the Circuit Court of Montgomery County, Alabama. Either party has the right to appeal from the final decree of the circuit court as provided by law.

(c) The board may commence a civil action in any circuit court having appropriate jurisdiction to enjoin any violation of this chapter. Jurisdiction is conferred upon the circuit courts of this state to hear and determine all such cases. The board may commence and maintain these actions without the filing of a bond or security. An injunction may be issued upon proof that the person is in violation of this chapter, without requiring proof of actual damage sustained by any person. If an injunction is issued, it shall not relieve any person or persons from any appropriate criminal prosecution.

CREDIT(S)

(Act 2001-660, p. 1365, § 11.)

§ 34-15B-12. Board of Registration for Interior Design fund.

All fees received by the board shall be deposited into a fund known as the Board of Registration for Interior Design Fund in the State Treasury which is hereby established. The fund shall be utilized, in the discretion of the board, to regulate the practice of interior design and to pay the expenses of the board, including the cost of necessary employees, legal expenses, administrative expenses, and other necessary expenses associated with enforcing and administering this chapter. All fees collected prior to August 1, 2001, and collected pursuant to former Chapter 15A of this title are hereby ratified and validated, and transferred to the fund.

CREDIT(S)

(Act 2001-660, p. 1365, § 12.)

§ 34-15B-13. Authorization to practice.

(a) An individual holding a certificate of registration shall not be subject to the 2,500 square feet limitation or other limitations contained in subsection (b) of Section 34-2-32. An individual holding a certificate of registration shall be authorized to practice interior design in any building or space within a building consisting of a total area of less than 5,001 square feet, and not intended for assembly occupancy, except schools, churches, auditoriums or other buildings intended for assembly occupancy of people. Provided, nothing shall prevent an interior designer from preparing designs, drawings, and specifications for selection, use, or location of finishes, materials, equipment, furnishings, furniture, fixtures, and personal property; or administering contracts for fabrication, procurement, or installation in connection with finishes, materials, equipment, furnishings, furniture, and personal property. Notwithstanding the provisions of subsection (c) of Section 34-2-32, any and all officials of this state or of any city, town, or county charged with the enforcement of laws, ordinances, or regulations relating to the construction or alteration of buildings are hereby authorized to accept or approve plans or specifications and issue permits on the same, prepared by any individual holding a certificate of registration, provided the plans or specifications are consistent with this subsection.

(b) An individual holding a valid certificate of registration and further authorized as a registered interior designer shall be authorized to practice interior design in any building, regardless of square footage or usage, and shall not be subject to any limitations contained in subsection (b) of Section 34-2-32.

(c) Notwithstanding the provisions of subsection (c) of Section 34-2-32, any and all officials of this state or of any city, town, or county charged with the enforcement of laws, ordinances, or regulations relating to the construction or alteration of buildings are hereby authorized to accept or approve plans or specifications and issue permits on the same, prepared by individuals authorized as

registered interior designers, provided such plans or specifications are consistent with subsection (b), and the plans and specifications are within the definition of the practice of interior design under this chapter. An individual authorized as a registered interior designer may submit drawings, plans, or specifications with other licensed professionals if such work is outside the scope of the practice of interior design.

CREDIT(S)

(Act 2001-660, p. 1365, § 13.)

§ 34-15B-14 Relation to state and local construction codes, etc.

This chapter shall not affect any state or local fire, safety, building, or construction code, including the requirements contained therein; provided, as an exception, state or local building officials may accept a drawing prepared by an individual holding a certificate of registration and/or authorized as a registered interior designer.

CREDIT(S) (Act 2001-660, p. 1365, § 14.)

§ 34-15B-16 Selection of products subject to building codes.

Persons holding a valid certificate of registration or those persons specified in subparagraph 4. of paragraph b. of subdivision (4) of Section 34-15B-3 shall be authorized to specify or select products otherwise subject to building codes, so long as the specifications and selections are consistent with the codes.

CREDIT(S)

(Act 2001-660, p. 1365, § 16.)

§ 34-15B-18 Sunset provision.

The board shall be subject to the Alabama Sunset Law, as provided in Chapter 20, Title 41, as an enumerated agency as provided in Section 41-20-3, and shall have a termination date of October 1, 2002, and every four years thereafter, unless continued pursuant to the Alabama Sunset Law.

CREDIT(S)

(Act 2001-660, p. 1365, § 19.)

Circuit Court of Jefferson County Ruling (8/23/04)

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

State of Alabama, Plaintiff, vs. Diane Burnett Lupo, Defendant,

CIVIL ACTION NO: CV-02-5201-HSL

ORDER

The above styled cause came on before this Court in the form of a non-jury trial. This action is brought by the State of Alabama against Diane Burnette Lupo for violation of Alabama Code 34-15B-1 (1975) or the Alabama Interior Design Consumer Protection Act (Act 2001, No. 01-660). Representing the State of Alabama was the Honorable James M. Smith. Representing the Defendant, Lupo, was the Honorable Mark W. Lee. Lupo was specifically cited for "failing to be registered with Board Pursuant to 8(B) of the Act." In addition to assessing Lupo a fine of \$1,500 plus costs of \$235, the State of Alabama ordered Lupo to cease and desist from offering interior design services, and advertising to offer interior design services, without being registered. The State of Alabama (thru the State Board of Registration for Interior Design) brings this action to enforce the order of the Board.

Defendant Lupo challenges the constitutionality of the legislation upon which the Board acted in exercising jurisdiction and levying its fine and cease and desist order. In particular, Lupo argues that the Act in question is unconstitutional as being overly broad, unreasonable, and vague.

This Court agrees. Upon hearing the witnesses and arguments of the parties, having considered the evidence and briefs submitted, it is the opinion of this Court, as outlined below, that the Act is overly broad, unreasonable, and vague. Additionally, the Court's review of ***Ross Neely Express, Inc., v. Alabama Department of Environmental Management*, 437 So.2d 82 (1983)**, provides case law central to the issue before the Court.

It is well established that the right to due process is guaranteed to the citizens of Alabama under the Alabama Constitution of 1901, Article 1, Sections 6 and 13. This Constitutional right to due process applies in civil actions as well as criminal proceedings. The courts have found that this right is violated when a statute or regulation is unduly vague, unreasonable, or overbroad.

In the case at bar, though the legislative Act affects the practice of interior design and provides regulatory parameters defined as being within the practice of interior design, the evidence shows that the parameters defined by the Act clearly bleeds over into other occupational areas of interior consult not traditionally held out as interior design work. The Court finds the reach of the Act overbroad.

The evidence before the Court also shows that the enforcement of the Act makes it a criminal offense for one to perform in occupational areas of interior consult not traditionally held out as interior design work. The result of which was the creation of uncertainty among established interior decorators who do not perform interior design work or hold themselves out as interior designers, as to which activities they could lawfully perform under the statute. The Court finds that absence of clarity in the statute as unduly vague. In ***Kahalley v. State*, 254 Ala. 482, 48 So.2d 794 (1950)**, the court stated "Legislation may run afoul of the due process clause because of a failure to set up any sufficient guidance to those who would be law-abiding, or to advise a Defendant of the nature and cause of an accusation he is called on to answer, or to guide the courts in the law's enforcement."

While the Court acknowledges that certain regulatory matters are clearly subject to the police powers of the state of Alabama, the restraint imposed here upon the performance of activities in occupational areas of interior consult not traditionally held out as interior design work is unreasonable. In ***City of Russellville v. Vulcan Materials Co*, 382 So.2d 525 (1980)**, the court said: "The validity of a police power regulation... primarily depends on whether, under all the existing circumstances, the regulation is reasonable, and whether it is really

designed to accomplish a purpose properly falling within the scope of the police power." The evidence before the Court shows unreasonableness of the Act and that the enforcement of the Act has no rational relationship to the health, safety, or welfare of the citizens of the State of Alabama.

For all the reasons outlined above, this court finds for the Defendant, Diane Burnette Lupo, and against the Plaintiff, State of Alabama. Accordingly, it is the judgement of this Court that the Alabama Interior Design Consumer Protection Act is **overly broad, unreasonable, and unduly vague**, and therefore violates due process as guaranteed by the Constitution of the State of Alabama.

Costs taxed to the State of Alabama.

DONE AND ORDERED, this 23rd day of August 2004.

Helen Shores Lee

Circuit Judge

Act 2006-518 – (4/18/06)

1 SB278
2 78469-4
3 By Senators Dixon, Penn, Barron, Figures, and Myers
4 RFD: Economic Expansion and Trade
5 First Read: 12-JAN-06



1 SB278

2
3
4 ENROLLED, An Act,

5 Relating to the Alabama Sunset Law; to continue the
6 existence and functioning of the Alabama State Board of
7 Registration for Interior Design until October 1, 2007; with
8 certain modifications; to amend Section 34-15B-3(4)b4, Code of
9 Alabama, so as to allow consultation services to be charged
10 for and collected, regardless of whether or not the sale is
11 ultimately consummated.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Pursuant to the Alabama Sunset Law, the
14 Sunset Committee recommends the continuance of the Alabama
15 State Board of Registration for Interior Design until October
16 1, 2007; with the additional recommendations for statutory
17 changes as set out in Section 2.

18 Section 2. The existence and functioning of the
19 Alabama State Board of Registration for Interior Design,
20 created and functioning pursuant to Sections 34-15B-1 to
21 34-15B-18, inclusive, Code of Alabama 1975, is continued, and
22 those code sections are expressly preserved, until October 1,
23 2007; with the following change; Section 34-15B-3(4)b4 is
24 amended to read as follows:

25 "§34-15B-3(4)b4.

1 "The performance of consultation or services
2 pursuant to selling, selecting or assisting in selecting
3 personal property or fixtures, such as, but not limited to,
4 furnishings, decorative accessories, furniture, paint, wall
5 coverings, window treatments, floor coverings, surface mounted
6 lighting, or decorative materials, pursuant to a consultation
7 or retail sale; installing or coordinating installation as
8 part of the prospective retail sale or consultation; or
9 providing computer-aided or other drawings for the purpose of
10 retail sales or consultations, provided those drawings are for
11 placements or material lists. Nothing herein shall prohibit
12 any person from charging a fee for such services whether or
13 not a consultation or retail sale is consummated. Provided,
14 however, an individual, partnership, or corporation shall not
15 use the title designations set forth in Section 34-15B-3 nor
16 receive a certificate of registration without successful
17 completion of the NCIDQ examination and/or a sealed level
18 examination, as applicable, and as approved by the board.
19 Services performed shall be subject to all fire, safety,
20 building and construction codes."

21 Section 3. The Legislature concurs in the
22 recommendations of the Sunset Committee as provided in
23 Sections 1 and 2 of this act.

1 Section 4. This act shall become effective
2 immediately upon its passage and approval by the Governor, or
3 its otherwise becoming law.

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Lucy Baxley

President and Presiding Officer of the Senate

Art. / Hunt

Speaker of the House of Representatives

Senate 09-FEB-06.

I hereby certify that the within Act originated in and passed the Senate.

Senate 17-APR-06

I hereby certify that the within Act originated in and passed the Senate, as amended by Executive Amendment.

McDowell Lee
Secretary

House of Representatives

Passed: 23-FEB-06

House of Representatives

Passed: 17-APR-06, as amended by Executive Amendment.

By: Senator Dixon

APPROVED *April 18, 2006*
TIME *1:49 pm*
Bob Riley
GOVERNOR

Alabama Secretary Of State
Act Num....: 2006-518
Bill Num...: S-278

Alabama Supreme Court Ruling – Lupo Case (10/12/07)

State of Alabama v. Diane Burnett Lupo

1050224

SUPREME COURT OF ALABAMA

2007 Ala. LEXIS 220

October 12, 2007, Released; ABRIDGED BY QUINN

PRIOR HISTORY: [*1]

Appeal from Jefferson Circuit Court. (CV-02-5201).

DISPOSITION: AFFIRMED.

CASE SUMMARY:

PROCEDURAL POSTURE: The Jefferson Circuit Court (**Alabama**) entered a judgment that declared the **Alabama** Interior Design Consumer Protection Act, 2001 **Ala.** Acts 660, codified at **Ala.** Code § 34-15B-1 et seq. (Act), unconstitutional. Plaintiff state interior design board, which had sued defendant interior designer for violating the Act, appealed.

OVERVIEW: The state interior design board sued the interior designer in the trial court and alleged that she was in violation of the **Alabama** Interior Design Consumer Protection Act, 2001 **Ala.** Acts 660, **Ala.** Code § 34-15B-1 et seq., for practicing "interior design" without registering with the state interior design board. In response, she alleged that the Act was unconstitutional. The trial court held a bench trial and heard evidence that the services she provided to clients consisted of advice in selecting paint colors, accessories, fabrics, and furniture for homes and businesses. The trial court then found that the Act was overly broad, unreasonable, and vague in violation of the **Alabama** Constitution's due process provisions. On appeal, the state supreme court found the law was unreasonable because part of it allowed a nonregistered individual to make recommendations if they were made pursuant to a retail sale while nonregistered people like the interior designer could not make recommendations at all, even though the State had little legitimate interest in regulating matters such as the color of living room walls or the type of throw pillows to place on a sofa.

OUTCOME: The trial court's judgment was affirmed.

JUDGES: SMITH, Justice. Cobb, C.J., and See, Lyons, Woodall, Stuart, Bolin, and Murdock, JJ., concur. Parker, J., concurs specially.

OPINION BY: SMITH

OPINION

SMITH, Justice.

State of **Alabama**, by and through the **Alabama** State Board of Registration for Interior Design ("the Board"), appeals from a judgment of the Jefferson Circuit Court declaring the **Alabama** Interior Design Consumer Protection Act, Act No. 2001-660, **Ala. Acts** 2001 ("the Act"), codified at § 34-15B-1 et seq., **Ala. Code** 1975, unconstitutional. We affirm.

Facts and Procedural History

On August 28, 2002, the Board sued Diane Burnett **Lupo** in the Jefferson Circuit Court. The complaint alleged that the Board had found **Lupo** in violation of the Act for practicing "interior design" without registering with the Board. The complaint further alleged that the Board had fined **Lupo** \$1,500 and sought a judgment requiring **Lupo** to pay the fine plus \$235 in costs and an injunction prohibiting **Lupo** from practicing interior design unless she complies with the requirements of the Act.

Lupo's answer denied the material allegations of the complaint and asserted that the Act is unconstitutional because, she argued, it is overly broad and deprives her of her liberty interest in violation of due process.

Following a nonjury trial and the submission of briefs, the trial court issued an order holding that the Act was "overly broad, unreasonable, and vague" and that it therefore violated the due-process provisions of the **Alabama** Constitution. The Board filed a motion to alter, amend, or vacate the judgment and also moved for a stay of the judgment. The parties consented to extend the time period under Rule 59.1, **Ala. R. Civ. P.**, for the trial court to rule on the Board's postjudgment motion. The trial court eventually denied the postjudgment motion within the time period stipulated by the parties, and the Board filed a timely notice of appeal.

Discussion

In 1982, the legislature enacted Act No. 82-497, **Ala. Acts** 1982, which was codified at §§ 34-15A-1 to -7, **Ala. Code** 1975). Act No. 82-497 was a "title" act--it regulated the use of the title "interior designer" but did not regulate the practice of "interior design." Thus, the 1982 Act restricted the use of the title "interior designer" to those individuals who had complied with the registration provisions of the 1982 Act, but it did not limit who could engage in the practice of interior design.

The evidence before the trial court showed that **Lupo** had been an "interior decorator" for more than 22 years. The services she provided to clients consisted of advice in selecting paint colors, accessories, fabrics, and furniture for homes and businesses. Many of the services **Lupo** provided as an interior decorator also could have been classified as "interior design" under the definition of that term in the 1982 Act. Even so, because the 1982 Act was a "title" act, **Lupo** was able to offer those services so long as she did not use the title "interior designer."

However, when the legislature enacted the Act, it repealed the 1982 Act. Although similar in some ways to the 1982 Act, the Act differs from its predecessor in one significant manner: it restricts the practice of interior design to those individuals who have been issued a certificate of registration by the Board. In particular, § 8(c) of the Act states that an individual who practices interior design without having a certificate of registration from the Board is guilty of a Class A misdemeanor.

In January 2002, **Lupo** appeared before the Board to respond to charges that she was not complying with the Act. The Board alleged that **Lupo** was using the title "interior designer" and was practicing interior design without a certificate of registration. After a hearing, the Board determined the **Lupo** had violated the Act, assessed a fine of \$ 1,500 and costs of \$ 235, and ordered her to cease from practicing interior design without having a certificate of registration from the Board. To enforce its order, the Board then filed the present action in the Jefferson Circuit Court. In her defense to the action, **Lupo** asserted--and the trial court held--that the Act is unconstitutional.

As authority for her assertion that the Act is unconstitutionally overbroad, vague, and unreasonable, **Lupo** cites *Ross Neely Express, Inc. v. Alabama Department of Environmental Management*, 437 So. 2d 82 (Ala. 1983), a decision the trial court cited in its order finding the Act unconstitutional. The defendant in *Ross Neely Express* operated a truck terminal in Montgomery County. To reach the terminal, the defendant's trucks had to travel along an unpaved access road. The Alabama Air Pollution Control Commission claimed that by creating dust as they traveled along the access road Ross Neely's trucks were violating certain rules and regulations of the Alabama Department of Environmental Management ("ADEM"). 437 So. 2d at 83-84. This Court held that the ADEM rules and regulations the defendant was charged with violating were unconstitutional. 437 So. 2d at 85-86.

In response to **Lupo's** argument that, under the principles stated in *Ross Neely Express*, the Act is unconstitutionally overbroad, vague, and unreasonable, the Board argues that **Lupo** failed to prove beyond a reasonable doubt that the Act is unconstitutionally overbroad, vague, or unreasonable. We disagree.

Lupo has sufficiently demonstrated that the Act-- particularly in its definition of the "practice of interior design"--restricts her ability to provide interior-decorating services. When asked at trial to explain the services she provided as an interior decorator, **Lupo** testified:

"I go into someone's house and I pick out their paint colors, their art, flooring, as in carpet, telling them if they need to have their hardwoods redone or maybe, you know, linoleum come up and tile go down. . . . [I]t's strictly the surfaces of the interiors of [a client's] house. I work with contractors and architects to draw up that. I don't do drawings. . . . I am strictly doing surfaces as far as paint colors, accessories, fabrics, furniture, things like that."

Those activities--giving advice to clients as to paint colors, art, flooring, accessories, fabrics, and furniture--are within the definition of the "practice of interior design" in § 3(4) of the Act. That section defines the "practice of interior design" as:

[HN3] "The performance of, or offering to perform, services for a fee or other compensation, directly or indirectly, to another person, or to a partnership, corporation, or other legal entity, in connection with the design, utilization, furnishing, or fabrication of elements in interior spaces in buildings, homes, and related structures. These services include, but are not limited to, the following: Programming the functional requirements for interior spaces; planning interior spaces; preparing analyses of user needs for interior spaces; preparing designs, drawings, and specifications for selection, use, location, color, and finishes of interior walls, materials, equipment, furnishings, furniture, and personal property; administering contracts for fabrication, procurement, or installation in connection with reflected ceiling plans, space utilization, furnishings, or the fabrication of nonstructural elements within and surrounding interior spaces of buildings."

However, certain activities are exempt from the definition of the practice of interior design. **Lupo** emphasizes the following exemption (which the parties refer to as the "retail-sale exemption"):

"The performance of services pursuant to selling, selecting, or assisting in selecting personal property or fixtures, such as, but not limited to, furnishings, decorative accessories, furniture, paint, wall coverings, window treatments, floor coverings, surface mounted lighting, or decorative materials, *pursuant to a retail sale*; installing or coordinating installation as part of the prospective retail sale; or providing computer-aided or other drawings for the purpose of retail sales, provided those drawings are for placements or materials lists. Provided, however an individual, partnership, or corporation shall not use the title designations set forth in Section 34-15B-8 nor receive a certificate of registration without successful completion of the NCIDQ examination and/or a sealed level examination, as applicable, and as approved by the board. Services performed shall be subject to all fire, safety, building, and construction codes."

At trial, the chairperson of the Board, Courtney Oglesby, testified that the definition of the "practice of interior design" included such things as selecting paint colors or pillows for a sofa. According to Oglesby, an individual such as **Lupo** could not offer advice to clients regarding the selection of paint colors or "throw pillows" unless she was registered with the Board in accordance with the Act or offered the services "pursuant to a retail sale" under the retail-sale exemption.

The Board, however, argues that "[t]he language of the Act does not compel such a broad reading" and that the definition of the practice of interior design "does not contemplate mere recommendations of paint colors and throw pillows, but more comprehensive services involving analyzing, planning, drawing, and preparing specifications for interior spaces." (Board's brief, pp. 16-17.) The Board also argues that this Court should read the definition of the practice of interior design in the Act "as narrowly as its language permits, if necessary to avoid invalidity." (Board's brief, p. 19.)

In the present case, the definition of the "practice of interior design" plainly includes, as the chairperson of the Board acknowledged, things such as offering advice to a client regarding the selection of paint colors and sofa pillows, as well as the other services **Lupo** testified she offers as an interior

decorator. Section 3(4) of the Act (§ 34-15B-3(4)) provides: "These [interior-design] services include, but are not limited to, the following: . . . preparing designs, drawings, and specifications for selection, use, location, color, and finishes of interior walls, materials, equipment, furnishings, furniture, and personal property. . . ." The retail-sale exemption in § 3(4)d of the Act (§ 34-15B-3(4)(b)(4)) makes it even clearer, because it excludes from the definition of the practice of interior design "[t]he performance of services pursuant to . . . selecting, or assisting in selecting personal property or fixtures, such as, but not limited to, furnishings, decorative accessories, furniture, paint, wall coverings, window treatments, floor coverings, surface mounted lighting, or decorative materials" so long as those activities are "pursuant to a retail sale."

If the selection of "decorative accessories" or "paint" were not included in the "practice of interior design," there would be no need to exempt those activities under the retail-sale exemption. Consequently, we reject the Board's "narrow" reading of the definition, because the Board's reading would render portions of the retail-sale exemption superfluous.

The issue, therefore, is whether the Act is overbroad or unreasonable in its regulation of those activities when they are not related to a retail sale. In *Scott & Scott, Inc. v. City of Mountain Brook*, 844 So. 2d 577 (Ala. 2002), this Court examined the concepts of overbreadth and unreasonableness:

"An overbreadth challenge is based on the statute's 'possible direct and indirect burdens on speech.'" *United States v. Acheson*, 195 F.3d 645, 650 (11th Cir. 1999) (quoting *American Booksellers v. Webb*, 919 F.2d 1493, 1499-500 (11th Cir. 1990)). The overbreadth doctrine "permits the facial invalidation of laws that inhibit the exercise of First Amendment rights if the impermissible applications of the law are substantial when judged in relation to the statute's plainly legitimate sweep." *City of Chicago v. Morales*. The doctrine "protects the public from the chilling effect such a statute has on protected speech; the court will strike down the statute even though in the case before the court the governmental entity enforced the statute against those engaged in unprotected activities." *Acheson* quoting *Nationalist Movement v. City of Cumming*, (Tjoflat, J., dissenting).'

However, in *Friday v. Ethanol Corporation*, this Court recognized a broader application of the overbreadth doctrine by stating, in pertinent part:

"The doctrine of overbreadth recognizes that a state legislature may have a legitimate and substantial interest in regulating particular behavior, but "that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Shelton v. Tucker*. Historically, the overbreadth doctrine has been used by the federal courts to prevent a chilling effect on First Amendment freedoms. The overbreadth doctrine does not apply to commercial speech under the Federal Constitution. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.* However, the overbreadth doctrine under the **Alabama** Constitution has been applied in due process cases not involving First Amendment freedoms. See *Ross Neely Express, Inc. v. Alabama Department of Environmental Management*.'

In *Ross Neely Express, Inc. v. Alabama Department of Environmental Management*, this Court stated:

"Statutes and regulations are void for overbreadth if their object is achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms. . . ."

"This Court has also recognized that the right to due process under the **Alabama** Constitution is violated when a statute, regulation, or ordinance imposes restrictions that are unnecessary and unreasonable upon the pursuit of useful activities in that they do not bear some substantial relation to the public health, safety, or morals, or to the general welfare, the public convenience, or to the general prosperity."

"*Friday v. Ethanol Corp.*, citing *Ross Neely Express, Inc.*,

"The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary." *Members of City Council of Los Angeles v. Taxpayers for Vincent*. If an ordinance is "fairly debatable, a court will not substitute its judgment for that of the municipal government body acting in a legislative capacity." *City of Russellville v. Vulcan Materials Co.*"

In the present case, § 2 of the Act (§ 34-15B-2) includes the following statement of legislative findings:

"The Legislature finds and declares that interior design is a learned profession, involving issues such as indoor pollution, fire safety, space planning, and requirements of special needs citizens. For this is a matter of public interest, safety protection, and concern that persons practicing interior design merit and receive the confidence of the public and that only qualified persons be permitted to practice interior design in the State of **Alabama**. This act shall be liberally construed to carry out these purposes."

The Board contends that the Act is merely a licensing statute that "protects the public by enabling the public to rely on licensure as proof of qualifications." (Board's reply brief, p. 2.) We disagree.

At the trial in the circuit court, the chairperson of the Board denied that the State had any interest in regulating advice regarding things such as selecting throw pillows on the sofa of a private individual's residence; she testified that "[t]he State doesn't have any interest in the color of your living room walls. The State is trying to determine the difference in a professional and nonprofessional." In its materials to this Court, the Board does not assert that the State has a legitimate interest in regulating "the color of . . . living room walls" or the number or type of throw pillows on a sofa in an individual's residence. The Board suggests, however, that the Act is necessary to ensure that a person who makes recommendations regarding materials to be installed in a residence or business is "qualified" to select materials that comply with regulations such as fire codes or with laws such as the Americans with Disabilities Act.

However, the existence of the retail-sale exemption negates the Board's assertion that the qualifications for interior designers included in the Act are necessary to ensure that individuals engaged in the practice of interior design recommend materials that comply with applicable laws and regula-

tions. Under the retail-sale exemption in § 3(4)d (§ 34-15B-3(4)(b)(4)), an individual not registered with the Board may offer advice about the selection of a number of materials --"furnishings, decorative accessories, furniture, paint, wall coverings, window treatments, floor coverings, surface mounted lighting, or decorative materials"--to be installed in houses or places of business, *if* that advice is given "pursuant to a retail sale." Additionally, the retail-sale exemption states that the design "[s]ervices performed *shall be subject to all fire, safety, building, and construction codes.*" *Id.* (emphasis added). Thus, the retail-sale exemption permits nonregistered individuals to make--if done "pursuant to a retail sale"--a recommendation of those materials that would comply with applicable laws and codes. If the position of the Board is correct, we do not understand how acting "pursuant to a retail sale" qualifies a nonregistered individual to make such a recommendation. Accordingly, the Board's justification of the Act is not reasonable.

We conclude, therefore, that the Act "'imposes restrictions that are unnecessary and unreasonable upon the pursuit of useful activities'" and that those restrictions "'do not bear some substantial relation to the public health, safety, or morals, or to the general welfare, the public convenience, or to the general prosperity.'" *Scott & Scott* quoting *Friday v. Ethanol Corp.* Consequently, the Act violates Art. 1, §§ 6 and 13, **Ala.** Const. of 1901.

The Board argues that this Court should sever any provision of the Act it finds unconstitutional rather than declaring the entire act unconstitutional.

"If a portion of a legislative enactment is determined to be unconstitutional but the remainder is found to be enforceable without it, a court may strike the offending portion and leave the remainder intact and in force. Courts will strive to uphold acts of the legislature. The inclusion of a severability clause is a clear statement of legislative intent to that effect, but the absence of such a clause does not necessarily indicate the lack of such an intent or require a holding of inseverability."

The Act includes a severability provision. § 18, Act No. 2001-660, **Ala.** Acts 2001 ("The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains."). However, the unconstitutional provision in the Act is its overbroad and unreasonable definition of the "practice of interior design," which is "so intertwined with the remaining portions" of the Act that the Act would be meaningless without it. *State ex rel. Jeffers v. Martin*, ("Under these well-established principles, the judiciary's severability power extends only to those cases in which the invalid portions are "'not so intertwined with the remaining portions that such remaining portions are rendered meaningless by the extirpation.'" *Hamilton v. Autauga County* quoting *Allen v. Walker County*. If they are so intertwined, it must "'be assumed that the legislature would not have passed the enactment thus rendered meaningless.'" *Id.* In such a case, the entire act must fall. Consequently, the objectionable portion cannot be severed, and the Act in its entirety is unconstitutional.

Conclusion

The judgment of the trial court declaring Act No. 2001-660, **Ala.** Acts 2001, unconstitutional is affirmed.

AFFIRMED.

Cobb, C.J., and See, Lyons, Woodall, Stuart, Bolin, and Murdock, JJ., concur.
Parker, J., concurs specially.

CONCUR BY: PARKER

CONCUR

PARKER, Justice (concurring [*33] specially).

I agree with the majority opinion that the **Alabama** Interior Design Consumer Protection Act, Act No. 2001-660, **Ala. Acts** 2001 ("the Act"), is unconstitutional.

I write to express concern over the State's invocation of *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483, 488, 75 S. Ct. 461, 99 L. Ed. 563 (1955):

"The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought."

The citizens of **Alabama** expect this Court to decide cases based on the timeless meaning of the United States Constitution and the **Alabama** Constitution of 1901, not merely on the basis that "[t]he day is gone" for a certain school of jurisprudence. Our oath of office as Justices requires this. However, I assure the State that this Court did not declare the Act unconstitutional because the Justices think its provisions are "unwise, improvident, or out of harmony" with their own school of thought. This Court declared the Act unconstitutional because it violates Art. 1, §§ 6 and 13, **Alabama** Constitution of 1901.

In 1901, when the **Alabama** Constitution was drafted and ratified, economic liberties such as the liberty of contract, the right to enforce a contract, the right to own and to use property, and the right to enter into and to practice the common occupations were highly valued. United States Supreme Court cases such as *Allgeyer v. Louisiana* (concerning the right of a Louisiana shipper to insure his shipment with an out-of-state insurer not licensed to do business in Louisiana), and *Lochner v. New York* (concerning the right of a bakery and bakery employees to contract to work more hours than allowed by New York law), upheld economic rights under the concept of the liberty of contract as guaranteed in the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Although it is fashionable to speak of the "demise of the *Lochner* era," and although later cases such as *Williamson*, supra, and *West Coast Hotel Co. v. Parrish*, give less protection to economic liberties and more deference to such state interests as health and safety, the Court has never denied that the liberty of contract is a constitutionally protected right.

The **Alabama** Constitution of 1901 was in the process of being drafted and ratified during the *Allgeyer-Lochner* era. Thomas Goode Jones, one of the primary drafters of that constitution, served as governor from 1890 to 1894. During that time an economic crisis led to a proposal to issue a moratorium on mortgage foreclosures. Governor Jones opposed that proposal, both because he thought it was unconstitutional and because he thought it was economically unwise. The framers of the **Alabama** Constitution of 1901 protected economic liberties and other liberties in the Due Process Clause of Art. I, § 6 ("[He] shall not . . . be deprived of life, liberty, or property, except by due proc-

ess of law"), using language similar to the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution. But they also protected economic liberties by adopting Art. I, § 1 ("That all men are equally free and independent; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness."), § 13 ("That all courts shall be open; and that every person, for any injury done to him, in his lands, goods, person, and reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay."), § 22 ("That no . . . law, impairing the obligations of contracts . . . shall be passed by the legislature. . . ."),¹⁰ § 23 ("private property shall not be taken for, or applied to public use, unless just compensation be first made therefor; nor shall private property be taken for private use, or for the use of corporations, other than municipal, without the consent of the owner," thereby providing protection that goes beyond those found in the "takings" clause of the Fifth Amendment to the United States Constitution), § 35 ("That this sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty, and property, and when the government assumes other functions it is usurpation and oppression."), and § 36 ("That this enumeration of certain rights shall not impair or deny others retained by the people; and, to guard against any encroachments on the rights herein retained, we declare that everything in this Declaration of Rights is excepted out of the general powers of government, and shall forever remain inviolate."). Concerning § 35, this Court stated in *Churchill v. Board of Trustees of University of Alabama in Birmingham*:

"The prohibition of § 35 is not to be taken lightly. The 'compelling need' criterion for governmental involvement in profit-making ventures mandates that each challenged activity undergo careful scrutiny on a case by case basis to avoid the constitutional 'usurpation and oppression' admonition."

These provisions lead me to conclude that the framers of the **Alabama** Constitution of 1901 valued economic liberties as highly as did the United States Supreme Court Justices who decided *Allgeyer* and *Lochner* and that they intended to enshrine in the **Alabama** Constitution strong protections for economic liberties. As can be seen from the provisions quoted above, the safeguards for economic liberties the framers placed in the **Alabama** Constitution of 1901 are much more extensive than those in the United States Constitution. This Court has continued to recognize the value of economic liberties. In *City of Mobile v. Rouse*, this Court invalidated a city ordinance prohibiting persons from charging lesser fees than the ordinance specified for certain personal services, in that case barber services and laundry services. The Court in *Rouse* acknowledged that in *Franklin v. State ex rel. Alabama State Milk Control Board*, it had upheld regulation of the milk industry, but it distinguished that case because, it reasoned, the milk industry was "affected 'with a public interest.'" *Rouse*. The Court stated:

"Personal service can not become affected 'with public interest' unless the service rendered is official in character, or is rendered in connection with a business 'affected with public interest' or 'devoted to a public purpose.'"

Rouse recognized both the liberty of contract and the right to engage in an occupation:

"In *Meyer v. State of Nebraska*, the Supreme Court of the United States, treating what is embraced in the term 'liberty' as guaranteed by the Constitution, observed: 'While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual *to contract, to engage in any of the common occupations of life,*¹¹ to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.'

Rouse,

The Alabama Court of Civil Appeals has held that "[t]he right to engage in the profession of dentistry is a property right, and that right may be abrogated only by compliance with due process of law." *Delevan v. Board of Dental Exam'rs of Alabama*, 620 So. 2d 13, 16 (Ala. Civ. App. 1993); see also *Board of Dental Exam'rs of Alabama v. Townsley*, 668 So. 2d 4, 5 (Ala. Civ. App. 1993). I recognize that the state may have a greater interest in regulating a profession than in regulating other occupations.

Similarly, in *Summers v. Adams Motor Co.*, the Court of Appeals upheld a liquidated-damages provision of a contract for the sale of an automobile. Summers, the purchaser, had agreed not to resell the car within six months without first offering to resell it to Adams Motor Company for its reasonable market value. The court stated:

"Before the contract was executed the Motor Company was not obligated to sell or deliver the automobile that was sold to Mrs. Summers except on terms agreeable to the dealer. Neither was Mrs. Summers obligated to purchase that automobile from the Motor Company except on terms agreeable to her. It would be an unwarranted interference with their liberty of contract for this court to say that they could not enter into the agreement that was entered into"

In *Juneman Electric, Inc. v. Cross*, the Court of Civil Appeals stated: "The police power of the state enters into every contract, but the exercise of that power must be for an end which is in fact public, and the means must be reasonably adapted to the end to be achieved." In *Alabama Power Co. v. The Citizens of Alabama*, this Court recognized that the United States Supreme Court has backed away from the strong emphasis on economic rights found in *Lochner* and other earlier cases. Justice See, writing for the Court, observed:

"While this Court has not engaged in a campaign to strike down economic legislation, it has applied some of the less activist substantive-due-process formulations previously employed by the Supreme Court of the United States. For example, in *Franklin v. State ex rel. Alabama State Milk Control Bd.*, 232 Ala., this Court acknowledged the Supreme Court's pre-*Lochner* [*42] 'affected-with-the-public-interest' test in upholding a statute regulating the production of milk. (Citing *Munn v. Illinois*, 94 U.S. (4 Otto) 113,

130, 24 L. Ed. 77 (1876) (holding that a state law regulating rates charged by grain elevators did not violate the elevator operators' substantive-due-process rights because the statute was 'affected with the public interest' and, thus, within the police power of the state)). In [*Alabama State Federation of Labor v. McAdory*], this Court quoted the Supreme Court's post-*Lochner* means-end relation test in upholding certain provisions of a labor statute. (Citing *Nebbia v. New York*) (stating that legislation did not impinge on substantive-due-process rights as long as it was not 'unreasonable, arbitrary or capricious' and 'the means selected [had] a real and substantial relation to the object sought to be attained'))."

While acknowledging that economic liberties are not protected as vigorously as they were during the *Lochner* era, this Court nonetheless recognized that economic liberties still enjoy protection.

The State's argument that certification of interior designers is necessary to ensure that designers are competent to choose safe products for use in interior design fails for two reasons: (1) federal and state commissions already exist to ensure that unsafe materials are not available for use in homes or businesses; and (2) there is no state requirement that homeowners or businesses retain any interior decorator or designer to decorate their homes or offices. If the public interest is not threatened by allowing homeowners and businesspersons to design their own houses and offices, it is difficult to understand how that interest is threatened by allowing them to retain interior designers who are not certified.

Not only are **Lupo's** rights to contract and to engage in her chosen occupation at stake in this case, but also the rights of the people of **Alabama** to contract with her. If a homeowner or businessperson wants to express himself by decorating his home or his office in a certain way, and if that person believes **Lupo** can best provide the design that he desires, the State should not tell that person that he may not contract with **Lupo** merely because **Lupo** lacks state certification or an academic degree. Nor should this Court embrace the paternalistic notion that the average citizen is incapable of choosing a competent interior designer without the State's help. The economic liberty of contract remains a protected right in **Alabama**, especially in a field like interior design that involves expressive activity.

Accordingly, I concur with the majority opinion. I write separately only to emphasize that the rights infringed by the Act, which the majority declares unconstitutional, are even more extensive than stated in the majority opinion.

Attorney General Opinion 2008-055 (3/12/08)

March 12, 2008

Honorable Vivian Davis Figures
Member, Alabama State Senate
Post Office Box 7985
Mobile, Alabama 36670

Interior Design Consumer Protection Act —
Interior Decorators — Interior Designers —
Mobile County

The Alabama State Board of Registration for
Interior Design continues to function
pursuant to Act 2006-518 and Act 2007-189.

Whether the amendment to section 34-15B-
3(4)b4 of the Code of Alabama, contained in
Act 2006-518, resolved the constitutional
problems of Act 2001-660 is a question that
must be decided by the courts of this state
and not by this Office.

Dear Senator Figures:

This opinion of the Attorney General is issued in response to your
request.

QUESTIONS

(1) Does the holding in *State v. Lupo*, which
declares Act 2001-660 unconstitutional, revive Act 82-
497 that was specifically repealed in Act 2001-660?

(2) What is the effect of the amendment of Act
2006-518 to section 34-15B-3(4)b4?

(3) What is the effect of Act 2007-189 on the
status of the Board of Registration for Interior Design
("Board")?

(4) Does the Board function under any law, or is the board effectively terminated?

FACTS AND ANALYSIS

In 1982, the Alabama Legislature sought to regulate the practice of interior design so, to that end, the Legislature passed Act 82-497. 1982 Ala. Acts No. 82-497, 825. Act 82-497 created the Alabama State Board of Registration for Interior Designers and provided that only those persons who complied with the registration procedures under the act could hold themselves out as “interior designers.” *Id.* Act 82-497 did not prohibit individuals from engaging in the practice of “interior design,” but merely restricted the use of the title “interior designer” to those who registered with the Board. *Id.* at 825-26.

In 2001, the Alabama Legislature passed Act 2001-660, which repealed Act 82-497. 2001 Ala. Acts No. 2001-660, 1365. Known as the “Interior Design Consumer Protection Act,” Act 2001-660 regulated the practice of interior design by restricting the practice only to those individuals who have been certified by the Board. *Id.* at 1365-66. Act 2001-660 was codified in section 34-15B-1, *et seq.*, of the Code of Alabama.

On August 28, 2002, the Board sued Diane Burnett Lupo in Jefferson County Circuit Court for practicing “interior design” without registering with the Board. *State v. Lupo*, ___ So. 2d ___, 2007 WL 2966823, *1 (Ala. 2007). Following a bench trial, the court issued an order holding that Act 2001-660 was “‘overly broad, unreasonable, and vague’ and that it therefore violated the due-process provisions of the Alabama Constitution.” *Id.* On October 12, 2007, the Alabama Supreme Court affirmed the decision of the circuit court and held that the Interior Design Consumer Protection Act was unconstitutionally overbroad and that, because the unconstitutional provisions of the act were “so intertwined with the remaining portions of the act,” they could not be severed. *Id.* at 10. The Court therefore struck down the entire act as unconstitutional. *Id.*

After the Jefferson County Circuit Court rendered its decision, but before the Alabama Supreme Court ruled in *State v. Lupo*, the Legislature enacted Act 2006-518. 2006 Ala. Acts No. 2006-518, 1192. This act amended section 34-15B-3(4)b4 of the Interior Design Consumer Protection Act. Section 34-15B-3(4)b enumerates the exceptions to those persons who are required to register with the Board before engaging in the practice of interior design. The stated purpose of Act 2006-518 was “to allow [interior design] consultation services to be charged for and collected, regardless of whether or not [a] sale is ultimately

consummated.” *Id.* Act 2006-518, or section 34-15B-3(4)b4, as amended, states as follows:

The performance of consultation or services pursuant to selling, selecting, or assisting in selecting personal property or fixtures, such as, but not limited to, furnishings, decorative accessories, furniture, paint, wall coverings, window treatments, floor coverings, surface mounted lighting, or decorative materials, pursuant to a consultation or retail sale; installing or coordinating installation as part of the prospective retail sale or consultation; or providing computer-aided or other drawings for the purpose of retail sales or consultations, provided those drawings are for placements or material lists. *Nothing herein shall prohibit any person from charging a fee for such services whether or not a consultation or retail sale is consummated.* Provided, however, an individual, partnership, or corporation shall not use the title designations set forth in Section 34-15B-8 nor receive a certificate of registration without successful completion of the NCIDQ examination and/or a sealed level examination, as applicable, and as approved by the board. Services performed shall be subject to all fire, safety, building, and construction codes.

ALA. CODE § 34-15B-3(4)b4 (Supp. 2007) (emphasis added).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997); *State Dep’t of Transp. v. McLelland*, 639 So. 2d 1370, 1371 (Ala. 1994). Under the plain language of section 34-15B-3(4)b4 after the 2006 amendment, the Interior Design Act allows persons to engage in substantially the same activities that constitute the practice of interior design, so long as they do not call themselves “interior designers.”¹ ALA. CODE § 34-15B-3(4)b4 (Supp. 2007).

¹ Section 34-15B-3(3) defines an interior designer as “[a] person who is engaged in, or offers to engage in, the practice of interior design in this state, and who has been issued a certificate of registration by the board in compliance with this chapter.” ALA. CODE 34-15B-3(3) (Supp. 2007). The 2006

Because Act 2006-518 did not take effect until after the trial court had issued its order declaring Act 2001-660 unconstitutional, the Alabama Supreme Court did not consider Act 2006-518 in its review of Act 2001-660, and expressly stated that Act 2006-518 was not considered in rendering its October 2007 opinion. *Lupo*, 2007 WL 2966823, *14 f.n. 7 (Ala. 2007).

Also, before the Alabama Supreme Court issued its opinion in *State v. Lupo* in October 2007, the Alabama Legislature enacted Act 2007-189. 2007 Ala. Acts No.2007-189. This act continued “[t]he existence and functioning of the Alabama State Board of Registration for Interior Design” until October 1, 2008. *Id.*

Whether the Board continues to operate as a legitimate state agency ultimately depends on whether the statutory authority upon which it operates is constitutional. Act 82-497 was repealed by Act 2001-660. *Lupo*, 2007 WL 2966823, *2. Act 2001-660, codified in sections 34-15B-1 through 34-15B-16, was then struck down by the Alabama Supreme Court *in toto*. *Id.* at 1. Act 2006-518, however, amended Act 2001-660 and was not considered by the Supreme Court in *State v. Lupo*. *Id.* at *14 f.n. 7. It is well settled in Alabama that validly enacted acts of the Legislature are presumed constitutional until they are determined to be otherwise by a court of competent jurisdiction. *State Bd. of Health v. Greater Birmingham Ass’n of Homebuilders, Inc.*, 384 So. 2d 1058, 1061 (Ala. 1980). Because Act 2006-518 did not become effective until after the trial court struck down Act 2001-660 and the Court did not consider Act 2006-518 in its review of Act 2001-660, it is the opinion of this Office that the Board continues to function pursuant to Act 2006-518.

Although the Board was set to expire on October 1, 2007, Act 2007-189 continued the existence and functioning of the Board until October 1, 2008. 2007 Ala. Acts No. 2007-189. The constitutional validity of the Interior Design Consumer Protection Act, post-Act 2006-518, is a matter for the courts to decide. It is the policy of this Office to refrain from deciding questions of constitutionality as this is the function of the courts. Opinion to W. C. Helveston, Administrator, Mobile County Commission, dated September 18, 1984, A.G. No. 84-00455 at 2.

amendment, as found in Act 2006-518, excludes from the definition of the “practice of interior design,” persons who engage in the activities enumerated under section 34-15B-3(4)b4.

CONCLUSION

The Alabama State Board of Registration for Interior Design continues to function pursuant to Act 2006-518 and Act 2007-189. Whether the amendment to section 34-15B-3(4)b4, contained in Act 2006-518, resolved the constitutional problems of Act 2001-660 is a question that must be decided by the courts of this state and not by this Office.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Pete Smyczek of my staff.

Sincerely,

TROY KING
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

TK/PJS
375341/116835

Board Members



ALABAMA STATE BOARD OF REGISTRATION FOR INTERIOR DESIGN

Post Office Box 11026 ♦ Birmingham, AL 35202 ♦ 205-317-0356

E-Mail: ID.admin@idboard.alabama.gov

www.idboard.alabama.gov

BOARD OF DIRECTORS 2008-2009

Wallace Williams, Chair
Western District

Gender: Male

Race: Caucasian

Term expires: 09/30/09

Jane Bise
Northern District

Gender: Female

Race: Caucasian

Term expires: 09/30/2009

January Williams
Southern District

Gender: Female

Race: Caucasian

Term expires: 09/30/2011

Kristen Corley
Central District

Gender: Female

Race: Caucasian

Term expires: 09/30/11

Minnie Finley
Consumer Member

Gender: Female

Race: Black

Term expires: 09/30/09

Phillip Rawlings
Eastern District

Gender: Male

Race: Caucasian

Term expires: 09/30/2012

Sharl Park-Gates Ph.D.
Educator Member

Gender: Female

Race: Caucasian

Term expires: 09/30/2012

BOARD ATTORNEY

Matthew (Matt) Beam

Gidiere, Hinton, Herndon, Christman

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Montgomery, AL 36104

Phone: (334) 834-9950

OFFICE ADMINISTRATOR

Bryant G. Williams

P.O. Box 11026

Birmingham, AL 35202

Phone: (205) 317-0356

id.admin@idboard.alabama.gov

Signed: 
Bryant Williams, Office Administrator

July 22, 2009
Date

RESPONSE TO SIGNIFICANT ISSUES

(Received by E-Mail)



ALABAMA STATE BOARD OF REGISTRATION FOR INTERIOR DESIGN

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September 10, 2009

Mr. John Norris
Director, Operational Division
Examiner of Public Accounts
P.O. Box 302251
Montgomery, AL 36130-2251

Dear Mr. Norris:

This letter is in response to the information provided by your office concerning the potential significant items identified during the recent audit of our board. In the report three (3) significant items were noted, and one (1) prior significant item listed.

The following will hopefully give the examiners and Sunset Committee a better understanding of our current status:

Significant Issue 2009-1 – The board by administrative rule has improperly made the notice and response aspects of its disciplinary process more restrictive on its licensees than the interior designer licensing law. The law requires the board to give not less than 45 days notice of charges and hearing, with 30 days allowed for response. The board's administrative rule requires the board to give not less than 30 days notice of a hearing, with 15 days allowed for response. Consequently, the administrative rules are not in harmony with the law.

Response: The Board appreciates the auditor bringing this issue to our attention, and we are currently in the process of correcting any discrepancies.

Significant Issue 2009-2 – Accessibility to the board's offices and its administrator is limited. The board's office is located within an interior design warehouse showroom in Birmingham, Alabama. There is no sign to indicate that the board's office is located within the business. The physical office is not open on a daily basis.

Response: The Board has always held service to our registered designers as a top priority. Every effort has been made to ensure quality service while operating with a limited budget. We respect the auditor's opinion in this matter, and although we feel the designers and the public have been served well given our financial challenges, we are now looking into options whereby we can offer more available office hours.

Significant Issue 2009-3 – Current law limits the practice of all persons currently licensed by the board to buildings of less than 5,001 square feet. Unlicensed persons, who can engage in the practices of interior design so long as they do not use the title, are not subject to this limit. There are two levels of interior designers provided in the interior designer licensing law, Interior Designers certified under the requirements of the *Code of Alabama 1975*, Section 34-15B-13 and Registered Interior Designers registered under the requirements of the *Code of Alabama 1975*, Section 34-15B-7.

Response: The current interior designer licensing law allows for designers certified under this statute to submit construction documents and specifications to building officials for permit in certain interior spaces of non-assembly occupancies not exceeding 5,001 square feet.

The "sealed" level exam referenced in the law was intended to qualify those certified interior designers wishing to be further qualified to work in larger and more critical environments to be further tested. Those interior designers meeting the requirements for the sealed level exam, upon passage and board review, would be granted sealing privileges for interior projects of unlimited square footage in certain spaces.

Since the constitutionality of the statute was brought into question within the judicial system, work on this portion of the statute was halted. Therefore, no interior designer in this state is a "Registered" Interior Designer.

Unlicensed persons performing services such as finish selection, furnishing selection and coordination are not subject to the limitation since permitting for these activities is not normally required. Whether a person is unlicensed or licensed, and are performing interior design or other activities, they are subject to other laws of the state of Alabama. Architectural and engineering statutes must also be considered, and compliance and disciplinary action relative to those statutes, not the interior design statute.

The three categories discussed above represent various levels of responsibility to the safety of the consumer/public and all three are in the realm of interior design. The more responsibility an interior designer seeks the more education, experience and testing is required.

This is the intent of the statute and hopefully addresses the confusion on this issue.

We appreciate the assistance provided by the Department of Examiners of Public Accounts, Ms. Robin Hutcheson, and Mr. John Norris in identifying potential areas which offer the opportunity for improvement. This Board is made up of very qualified and dedicated professionals who will strive to make this board a true asset to its membership and the public.

We welcome any comments, questions and suggestions.

Sincerely,


Mr. Wallace C. Williams
Chairman